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**SEC. 1. SHORT TITLE.**

This Act may be cited as the “Resolution Authority for Systemically Significant Financial Companies Act of 2009.”

**SEC. 2. GENERAL.**

Chapter [ ] of title [ ], United States Code, is amended by adding at the end the following.

**[ ] . RESOLUTION AUTHORITY.**

“(a) DEFINITIONS.—As used in this title--

“(1) INCORPORATED DEFINITIONS.—For purposes of this Act, the following terms have the meanings ascribed to them in Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813): “affiliate,” “bank holding company,” “company,” “control,” “depository institution,” “depository institution holding company,” “foreign bank,” “insured depository institution,” “savings and loan holding company,” and “subsidiary.”

“(2) APPROPRIATE FEDERAL REGULATORY AGENCY.—

“(A) Appropriate Federal Regulatory Agency.—The term “Appropriate Federal Regulatory Agency” means—

“(i) the Corporation, if the financial company is an affiliate of an insured depository institution or an insurance company;

“(ii) the Commission, if the financial company, or an affiliate thereof, is a broker or dealer registered with the Commission under section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)), as amended, (other than an insured depository institution); and

“(iii) the CFTC, if the financial company, or an affiliate thereof, is a futures commission merchant or a commodity pool operator registered with the CFTC under the Commodity Exchange Act.

1                   “(B) Rules of Construction.—More than one agency may be an  
2                   Appropriate Federal Regulatory Agency with respect to any given  
3                   financial company. In such instances where the Corporation is one of the  
4                   Appropriate Federal Regulatory Agencies, the Corporation shall be the  
5                   Appropriate Federal Regulatory Agency for purposes of subsection (b). In  
6                   such instances where the Corporation is not one of the Appropriate  
7                   Federal Regulatory Agencies, the Appropriate Federal Regulatory Agency  
8                   shall be, for purposes of subsection (b), determined based on which broker  
9                   or dealer, futures commission merchant, or commodity pool operator has  
10                  the largest assets as of the end of previous calendar quarter for which  
11                  unaudited financial statements are available.

12                  “(3) BRIDGE FINANCIAL COMPANY.—The term “bridge financial  
13                  company” means a new financial company organized by the Corporation  
14                  in accordance with subsection (o).

15                  “(4) CFTC.—The term “CFTC” means the Commodity Futures Trading  
16                  Commission.

17                  “(5) COMMISSION.—The term “Commission” means the Securities  
18                  and Exchange Commission.

19                  “(6) CORPORATION.—The term “Corporation” means the Federal  
20                  Deposit Insurance Corporation.

21                  “(7) COVERED FINANCIAL COMPANY. —The term “covered  
22                  financial company” means a financial company for which a determination  
23                  has been made pursuant to and in accordance with subsection (b)(2).

24                  “(8) CUSTOMER PROPERTY.—The term “customer property” has  
25                  the meaning ascribed to it in the Securities Investor Protection Act of 1970.

26                  “(9) FEDERAL RESERVE BOARD.—The term “Federal Reserve  
27                  Board” means the Board of Governors of the Federal Reserve System.

28                  “(10) FINANCIAL COMPANY.—The term “financial company” means  
29                  any company that—

30                         “(A) Is incorporated or organized under Federal law or the laws of  
31                         any State; and

32                         “(B) Is—

33                                 “(i) A bank holding company;

1 “(ii) A financial holding company as defined in section 2(p)  
2 of the Bank Holding Company Act of 1956, as amended  
3 (12 U.S.C. 1841(p)).

4 “(iii) A savings and loan holding company;

5 “(iv) A holding company of an insurance company;

6 “(v) A holding company of a broker or dealer registered  
7 with the Commission under section 15(b) of the Securities  
8 Exchange Act of 1934 (15 U.S.C. 78o(b)), as amended;

9 “(vi) A holding company of a futures commission merchant  
10 or commodity pool operator; or

11 “(vii) Any subsidiary of companies described in clauses (i)  
12 through (v) (other than an insured depository institution,  
13 any subsidiary thereof, any broker or dealer registered with  
14 the Commission under section 15(b) of the Securities  
15 Exchange Act of 1934 (15 U.S.C. 78o(b)), as amended,  
16 which is a member of the SIPC, or an insurance company).

17 “(11) INSURANCE COMPANY.—The term “insurance company”  
18 means a domestic insurance company, as that term is defined for purposes  
19 of Title 11 of the United States Code.

20 “(12) SECRETARY.—The term “Secretary” shall mean the Secretary of  
21 the Treasury or his designee.

22 “(13) SIPC.—The term “SIPC” means the Securities Investor Protection  
23 Corporation.

24 “(14) STATE.—The term “State” means a State of the United States, the  
25 District of Columbia, or any commonwealth, territory, or other possession  
26 of the United States, including the Commonwealth of Puerto Rico, the  
27 Commonwealth of the Northern Mariana Islands, American Samoa, Guam,  
28 and the Virgin Islands.

29 “(b) SYSTEMIC RISK DETERMINATION .

30 “(1) WRITTEN RECOMMENDATION OF THE FEDERAL RESERVE  
31 BOARD AND THE APPROPRIATE FEDERAL REGULATORY  
32 AGENCY.

33 “(A) VOTE REQUIRED.—At the request of the Secretary or the  
34 Chairman of the Federal Reserve Board or on their own initiative,  
35 the Federal Reserve Board and the Appropriate Federal Regulatory

1 Agency shall consider whether to make the written  
2 recommendation provided for in subparagraph (B), which  
3 recommendation shall be made upon a vote of not less than two-  
4 thirds of the members of the Federal Reserve Board then serving  
5 and two-thirds of the members of the board or of the commission  
6 then serving of the Appropriate Federal Regulatory Agency, as  
7 applicable.

8 “(B) RECOMMENDATION REQUIRED.—Any written  
9 recommendations made by the Federal Reserve Board and the  
10 Appropriate Federal Regulatory Agency under subparagraph (A)  
11 shall contain the following—

12 “(i) a description of the effect that the default of the  
13 financial company would have on economic conditions or  
14 financial stability in the United States; and

15 “(ii) the nature and the extent of assistance or actions that  
16 should be provided or taken by the Corporation regarding  
17 the financial company.

18 “(2) DETERMINATION BY THE SECRETARY.—Notwithstanding any  
19 other provision of Federal law or the law of any State, if, upon the written  
20 recommendation of the Federal Reserve Board and the board of directors  
21 or commission of the Appropriate Federal Regulatory Agency as provided  
22 for in paragraph (1)(A), the Secretary (in consultation with the President)  
23 determines that—

24 “(A) the financial company is in default or is in danger of default;

25 “(B) the failure of the financial company and its resolution under  
26 otherwise applicable Federal or State law would have serious  
27 adverse effects on financial stability or economic conditions in the  
28 United States; and

29 “(C) any actions or assistance under this section would avoid or  
30 mitigate such adverse effects

31 the Corporation may, with the approval of the Secretary, exercise one or  
32 more actions specified in subsection (c) taking into consideration the cost  
33 to the general fund of the Treasury and the potential to increase moral  
34 hazard on the part of creditors and shareholders in such financial  
35 companies.

36 “(3) DOCUMENTATION AND REVIEW.

37 “(A) In General.—The Secretary shall—

1 “(i) document any determination under paragraph (2);  
2 and,

3 “(ii) retain the documentation for review under  
4 subparagraph (B).

5 “(B) GAO Review.—The Comptroller General of the United  
6 States shall review and report to the Congress on any  
7 determination under paragraph (2), including—

8 “(i) the basis for the determination;

9 “(ii) the purpose for which any action was taken  
10 pursuant thereto; and

11 “(iii) the likely effect of the determination and such  
12 action on the incentives and conduct of financial companies  
13 and their creditors.

14 “(C) REPORT TO CONGRESS.—Within 30 days after a  
15 determination is made under paragraph (2), the Secretary shall  
16 provide written notice of any determination to the Committee on  
17 Banking, Housing, and Urban Affairs of the Senate and the  
18 Committee on Financial Services of the House of Representatives.  
19 The notice shall include a description of the basis for any  
20 determination.

21 “(4) DEFAULT OR IN DANGER OF DEFAULT.—For purposes of  
22 paragraph (2), a financial company shall be considered to be in default or  
23 in danger of default if any of the following conditions exist, as determined  
24 in accordance with paragraph (2):

25 “(A) A case has been, or likely will promptly be, commenced  
26 with respect to the financial company under Title 11, United States  
27 Code;

28  
29 “(B) The financial company is critically undercapitalized, as  
30 such term has been or may be defined by the company’s  
31 Appropriate Federal Regulatory Agency;

32  
33 “(C) The financial company has incurred, or is likely to incur,  
34 losses that will deplete all or substantially all of its capital, and  
35 there is no reasonable prospect for the company to avoid such  
36 depletion without assistance by the Corporation under this section;

37  
38 “(D) The financial company’s assets are, or are likely to be, less  
39 than its obligations to creditors and others; or

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“(E) The financial company is, or is likely to be, unable to pay its obligations (other than those subject to a bona fide dispute) in the normal course of business.

“(c) RESOLUTION; ASSISTANCE.— Upon the Secretary making the determination provided for in subsection (b), the Corporation may, with the approval of the Secretary, exercise any authority provided in this subsection under such terms and conditions that the Corporation deems appropriate including providing the assistance or taking the actions directly or indirectly and separately or in combination, including:

“(1) Making loans to, or purchasing any debt obligation of, the covered financial company or any subsidiary;

“(2) Purchasing assets of the covered financial company or any subsidiary directly or through an entity established by the Corporation for such purpose;

“(3) Assuming or guaranteeing the obligations of the covered financial company or any subsidiary to one or more third parties;

“(4) Acquiring any type of equity interest or security of the covered financial company or any subsidiary;

“(5) Taking a lien on any or all assets of the covered financial company or any subsidiary, including a first priority lien on all unencumbered assets of the company or any subsidiary to secure repayment of any financial assistance provided by the Corporation pursuant to this subsection;

“(6) Selling or transferring all, or any part thereof, of such acquired assets, liabilities, obligations, equity interests or securities of the covered financial company or any subsidiary upon such terms and conditions that the Corporation deems appropriate; and,

“(7) Appoint itself as conservator or receiver for the covered financial company.

“(d) JUDICIAL REVIEW.—If a conservator or receiver is appointed, including the appointment of the Corporation by the Corporation’s board of directors, for a covered financial company under subsection (c)(7), the covered financial company may, not later than 30 days thereafter, bring an action in the United States district court for the judicial district in which the home office of such covered financial company is located, or in the United States District Court for the District of Columbia, for an order requiring that the conservator or receiver

1 be removed, and the court shall, upon the merits, dismiss such action or direct the  
2 conservator or receiver to be removed. Review of such an action shall be limited  
3 to the appointment of a conservator or receiver under subsection (c)(7).

4 “(e) DIRECTORS NOT LIABLE FOR ACQUIESCING IN APPOINTMENT  
5 OF AGENCY.—The members of the board of directors (or body performing  
6 similar functions) of a covered financial company shall not be liable to the  
7 covered financial company’s shareholders or creditors for acquiescing in—

8 “(1) the Corporation’s acting as conservator or receiver for the covered  
9 financial company under this section; or

10 “(2) an acquisition, combination, or transfer of assets or liabilities under  
11 this section.

12 “(f) TERMINATION AND EXCLUSION OF OTHER ACTIONS.—The  
13 Corporation’s acting as conservator or receiver for a covered financial company  
14 under this section shall immediately, and by operation of law, terminate any case  
15 commenced with respect to the covered financial company under Title 11, United  
16 States Code, or any proceeding under any State insolvency law with respect to the  
17 covered financial company, and no such case or proceeding may be commenced  
18 with respect to the covered financial company at any time while the Corporation  
19 acts as conservator or receiver for the covered financial company.

20 “(g) RULEMAKING.—The Corporation and the Secretary may jointly  
21 promulgate such rules or regulations as they consider necessary or appropriate to  
22 implement the provisions of this section.

23 “(h) POWERS AND DUTIES OF CORPORATION.—

24 “(1) GENERAL POWERS.—

25 “(A) SUCCESSOR TO COVERED FINANCIAL  
26 COMPANY.—The Corporation shall, upon appointment as  
27 conservator or receiver for a covered financial company under this  
28 section, and by operation of law, succeed to—

29 “(i) all rights, titles, powers, and privileges of the  
30 covered financial company, and of any stockholder,  
31 member, accountholder, depositor, officer, or director of  
32 such institution with respect to the covered financial  
33 company and the assets of the covered financial company;  
34 and

35 “(ii) title to the books, records, and assets of any  
36 previous receiver or other legal custodian of such covered  
37 financial company.

1 “(B) OPERATE THE COVERED FINANCIAL COMPANY.—  
2 The Corporation as conservator or receiver for a covered financial  
3 company may—

4 “(i) take over the assets of and operate the covered  
5 financial company with all the powers of the members or  
6 shareholders, the directors, and the officers of the covered  
7 financial company and conduct all business of the covered  
8 financial company;

9 “(ii) collect all obligations and money due the covered  
10 financial company;

11 “(iii) perform all functions of the covered financial  
12 company in the name of the covered financial company;

13 “(iv) preserve and conserve the assets and property of the  
14 covered financial company;

15 “(v) provide by contract for assistance in fulfilling any  
16 function, activity, action, or duty of the Corporation as  
17 conservator or receiver, and:

18 “(vi) take, with the approval of the Secretary, any of the  
19 actions described in paragraphs (1) through (4) of  
20 subsection (c) with respect to the covered financial  
21 company in conservatorship or receivership.

22 “(C) FUNCTIONS OF COVERED FINANCIAL COMPANY’S  
23 OFFICERS, DIRECTORS, AND SHAREHOLDERS.—The  
24 Corporation may provide for the exercise of any function by any  
25 member or stockholder, director, or officer of any covered  
26 financial company for which the Corporation has been appointed  
27 as conservator or receiver under this section.

28 “(D) POWERS AS CONSERVATOR.—The Corporation may,  
29 as conservator, and subject to all legally enforceable and perfected  
30 security interests in the assets of the covered financial company  
31 take such action as may be—

32 “(i) necessary to put the covered financial company in a  
33 sound and solvent condition; and

34 “(ii) appropriate to carry on the business of the covered  
35 financial company and preserve and conserve the assets and  
36 property of the covered financial company.

1 “(E) ADDITIONAL POWERS AS RECEIVER.—The  
2 Corporation may, as receiver, place the covered financial company  
3 in liquidation and proceed to realize upon the assets of the covered  
4 financial company in such manner as the Corporation deems  
5 appropriate, including through the sale of assets, the transfer of  
6 assets to a bridge financial company established under subsection  
7 (o), or the exercise of any other rights or privileges granted to the  
8 receiver under this section.

9 “(F) ORGANIZATION OF NEW COMPANIES.—The  
10 Corporation as receiver may organize a bridge financial company  
11 under subsection (o).

12 “(G) MERGER; TRANSFER OF ASSETS AND  
13 LIABILITIES.—

14 “(i) IN GENERAL.—Subject to clause (ii), the  
15 Corporation as conservator or receiver may—

16 “(I) merge the covered financial company with  
17 another company; or

18 “(II) transfer any asset or liability of the covered  
19 financial company (including assets and liabilities  
20 associated with any trust or custody business)  
21 without obtaining any approval, assignment, or  
22 consent with respect to such transfer.

23 “(ii) FEDERAL AGENCY APPROVAL; ANTITRUST  
24 REVIEW.—

25 “(I) IN GENERAL.—If a transaction described  
26 in clause (i) requires approval by a Federal agency,  
27 the transaction may not be consummated before the  
28 5th calendar day after the date of approval by the  
29 Federal agency responsible for such approval with  
30 respect thereto. If, in connection with any such  
31 approval, a report on competitive factors is required,  
32 the Federal agency responsible for such approval  
33 shall promptly notify the Attorney General of the  
34 proposed transaction and the Attorney General shall  
35 provide the required report within 10 days of the  
36 request. If a filing is required under the Hart-Scott-  
37 Rodino Antitrust Improvements Act of 1976 with  
38 the Department of Justice or the Federal Trade  
39 Commission, the waiting period shall expire not  
40 later than the 30<sup>th</sup> day following such filing

1                                   notwithstanding any other provision of Federal law  
2                                   or any attempt by any Federal agency to extend  
3                                   such waiting period, and no further request for  
4                                   information by any Federal agency shall be  
5                                   permitted.

6                                   “(II) EMERGENCY.— If the Secretary of the  
7                                   Treasury in consultation with the Chairman of the  
8                                   Federal Reserve Board has found that the  
9                                   Corporation must act immediately to prevent the  
10                                  probable failure of 1 or more of the covered  
11                                  financial companies involved, the approvals and  
12                                  filings referred to in subclause (I) shall not be  
13                                  required and the transaction may be consummated  
14                                  immediately by the Corporation.

15                                 “(H) PAYMENT OF VALID OBLIGATIONS.—The  
16                                 Corporation, as conservator or receiver, shall, to the extent funds  
17                                 are available, pay all valid obligations of the covered financial  
18                                 company that are due and payable at the time of the appointment of  
19                                 the Corporation as conservator or receiver in accordance with the  
20                                 prescriptions and limitations of this section.

21                                 “(I) SUBPOENA AUTHORITY.—

22                                   “(i) IN GENERAL.—The Corporation may, for  
23                                   purposes of carrying out any power, authority, or duty with  
24                                   respect to a covered financial company (including  
25                                   determining any claim against the covered financial  
26                                   company and determining and realizing upon any asset of  
27                                   any person in the course of collecting money due the  
28                                   covered financial company), exercise any power  
29                                   established under section 8(n) of the Federal Deposit  
30                                   Insurance Act as if the covered financial company were an  
31                                   insured depository institution.

32                                   “(ii) RULE OF CONSTRUCTION.—This subsection  
33                                   shall not be construed as limiting any rights that the  
34                                   Corporation, in any capacity, might otherwise have to  
35                                   exercise any powers described in clause (i) under any other  
36                                   provision of law.

37                                 “(J) INCIDENTAL POWERS.—The Corporation, as  
38                                 conservator or receiver, may—

39                                   “(i) exercise all powers and authorities specifically  
40                                   granted to conservators or receivers under this section and

1 such incidental powers as shall be necessary to carry out  
2 such powers; and

3 “(ii) take any action authorized by this section, which the  
4 Corporation determines is in the best interests of the  
5 covered financial company, its customers, its creditors, its  
6 counterparties, or the stability of the financial system.

7 “(K) UTILIZATION OF PRIVATE SECTOR.— In carrying out  
8 its responsibilities in the management and disposition of assets  
9 from a covered financial company, the Corporation, as conservator  
10 or receiver, may utilize the services of private persons, including  
11 real estate and loan portfolio asset management, property  
12 management, auction marketing, legal, and brokerage services, if  
13 such services are available in the private sector and the  
14 Corporation determines utilization of such services is practicable,  
15 efficient, and cost effective.

16 “(L) SHAREHOLDERS AND CREDITORS OF COVERED  
17 FINANCIAL COMPANY.—Notwithstanding any other provision  
18 of law, the Corporation as conservator or receiver for a covered  
19 financial company pursuant to this section and its succession, by  
20 operation of law, to the rights, titles, powers, and privileges  
21 described in subsection (h)(1)(A) shall terminate all rights and  
22 claims that the stockholders and creditors of the covered financial  
23 company may have against the assets of the covered financial  
24 company or the Corporation arising out of their status as  
25 stockholders or creditors, except for their right to payment,  
26 resolution, or other satisfaction of their claims, as permitted under  
27 this section.

28 “(2) AUTHORITY OF CORPORATION TO DETERMINE  
29 CLAIMS.—

30 “(A) IN GENERAL.—The Corporation may, as receiver,  
31 determine claims in accordance with the requirements of this  
32 subsection and regulations prescribed under paragraph (3).

33 “(B) NOTICE REQUIREMENTS.—The receiver, in any case  
34 involving the liquidation or winding up of the affairs of a covered  
35 financial company, shall—

36 “(i) promptly publish a notice to the covered financial  
37 company’s creditors to present their claims, together with  
38 proof, to the receiver by a date specified in the notice which  
39 shall be not less than 90 days after the publication of such  
40 notice; and

1                                   “(ii) republish such notice approximately 1 month and 2  
2                                   months, respectively, after the publication under clause (i).

3                                   “(C) MAILING REQUIRED.—The receiver shall mail a notice  
4                                   similar to the notice published under subparagraph (B)(i) at the  
5                                   time of such publication to any creditor shown on the covered  
6                                   financial company’s books—

7                                   “(i) at the creditor’s last address appearing in such  
8                                   books; or

9                                   “(ii) upon discovery of the name and address of a  
10                                  claimant not appearing on the covered financial company’s  
11                                  books, within 30 days after the discovery of such name and  
12                                  address.

13                                  “(3) RULEMAKING AUTHORITY RELATING TO  
14                                  DETERMINATION OF CLAIMS.—

15                                  “(A) IN GENERAL.— Subject to subsection (h), the  
16                                  Corporation may prescribe rules and regulations regarding the  
17                                  allowance or disallowance of claims by the Corporation and  
18                                  providing for administrative determination of claims and review of  
19                                  such determination.

20                                  “(B) EXISTING RULES.— Subject to subsection (h), the  
21                                  Corporation may elect to use the regulations adopted pursuant to  
22                                  the provisions of section 11 of the Federal Deposit Insurance Act  
23                                  with respect to the determination of claims for a covered financial  
24                                  company as if the covered financial company were an insured  
25                                  depository institution.

26                                  “(4) PROCEDURES FOR DETERMINATION OF CLAIMS.—

27                                  “(A) DETERMINATION PERIOD.—

28                                  “(i) IN GENERAL.—Before the end of the 180-day  
29                                  period beginning on the date any claim against a covered  
30                                  financial company is filed with the Corporation as receiver,  
31                                  the Corporation shall determine whether to allow or  
32                                  disallow the claim and shall notify the claimant of any  
33                                  determination with respect to such claim.

34                                  “(ii) EXTENSION OF TIME.— The period described in  
35                                  clause (i) may be extended by a written agreement between  
36                                  the claimant and the Corporation.

1 “(iii) MAILING OF NOTICE SUFFICIENT.—The  
2 requirements of clause (i) shall be deemed to be satisfied if  
3 the notice of any determination with respect to any claim is  
4 mailed to the last address of the claimant which appears—

5 “(I) on the covered financial company’s books;

6 “(II) in the claim filed by the claimant; or

7 “(III) in documents submitted in proof of the  
8 claim.

9 “(iv) CONTENTS OF NOTICE OF  
10 DISALLOWANCE.—If any claim filed under clause (i) is  
11 disallowed, the notice to the claimant shall contain—

12 “(I) a statement of each reason for the  
13 disallowance; and

14 “(II) the procedures available for obtaining  
15 agency review of the determination to disallow the  
16 claim or judicial determination of the claim.

17 “(B) ALLOWANCE OF PROVEN CLAIM.—The Corporation  
18 shall allow any claim received on or before the date specified in  
19 the notice published under paragraph (2)(B)(i) by the Corporation  
20 from any claimant which is proved to the satisfaction of the  
21 Corporation.

22 “(C) DISALLOWANCE OF CLAIMS FILED AFTER END OF  
23 FILING PERIOD.—

24 “(i) IN GENERAL.—Except as provided in clause (ii),  
25 claims filed after the date specified in the notice published  
26 under paragraph (2)(B)(i) shall be disallowed and such  
27 disallowance shall be final.

28 “(ii) CERTAIN EXCEPTIONS.—Clause (i) shall not  
29 apply with respect to any claim filed by any claimant after  
30 the date specified in the notice published under paragraph  
31 (2)(B)(i) and such claim may be considered by the receiver  
32 if—

33 “(I) the claimant did not receive notice of the  
34 appointment of the receiver in time to file such  
35 claim before such date; and



1                   “(i)    STATUTE OF LIMITATION TOLLED.—For  
2                   purposes of any applicable statute of limitations, the filing  
3                   of a claim with the Corporation shall constitute a  
4                   commencement of an action.

5                   “(ii)   NO PREJUDICE TO OTHER ACTIONS.—Subject  
6                   to paragraph (9), the filing of a claim with the Corporation  
7                   shall not prejudice any right of the claimant to continue any  
8                   action which was filed before the appointment of the  
9                   Corporation as receiver for the covered financial company.

10               “(5)   PROVISION FOR JUDICIAL DETERMINATION OF  
11               CLAIMS.—

12               “(A)   IN GENERAL.—Before the end of the 60-day period  
13               beginning on the earlier of—

14                   “(i)    the end of the period described in paragraph  
15                   (4)(A)(i) (or, if extended by agreement of the Corporation  
16                   and the claimant, the period described in paragraph  
17                   (4)(A)(ii)) with respect to any claim against a covered  
18                   financial company for which the Corporation is receiver; or

19                   “(ii)   the date of any notice of disallowance of such claim  
20                   pursuant to paragraph (4)(A)(i),

21               the claimant may file suit on a claim (or continue an action  
22               commenced before the appointment of the receiver) in the district  
23               or territorial court of the United States for the district within which  
24               the covered financial company’s principal place of business is  
25               located or the United States District Court for the District of  
26               Columbia (and such court shall have jurisdiction to hear such  
27               claim).

28               “(B)   STATUTE OF LIMITATIONS.—If any claimant fails to  
29               file suit on such claim (or continue an action commenced before  
30               the appointment of the receiver) before the end of the 60-day  
31               period described in subparagraph (A), the claim shall be deemed to  
32               be disallowed (other than any portion of such claim which was  
33               allowed by the receiver) as of the end of such period, such  
34               disallowance shall be final, and the claimant shall have no further  
35               rights or remedies with respect to such claim.

36               “(6)   EXPEDITED DETERMINATION OF CLAIMS.—

37                   (A)    ESTABLISHMENT REQUIRED.—The Corporation shall  
38                   establish a procedure for expedited relief outside of the routine

1 claims process established under paragraph (4) for claimants  
2 who—

3 “(i) allege the existence of legally valid and enforceable  
4 or perfected security interests in assets of any covered  
5 financial company for which the Corporation has been  
6 appointed as receiver; and

7 “(ii) allege that irreparable injury will occur if the  
8 routine claims procedure is followed.

9 “(B) DETERMINATION PERIOD.—Before the end of the 90-  
10 day period beginning on the date any claim is filed in accordance  
11 with the procedures established pursuant to subparagraph (A), the  
12 Corporation shall—

13 “(i) determine—

14 “(I) whether to allow or disallow such claim; or

15 “(II) whether such claim should be determined  
16 pursuant to the procedures established pursuant to  
17 paragraph (4); and

18 “(ii) notify the claimant of the determination, and if the  
19 claim is disallowed, provide a statement of each reason for  
20 the disallowance and the procedure for obtaining judicial  
21 determination.

22 “(C) PERIOD FOR FILING OR RENEWING SUIT.—Any  
23 claimant who files a request for expedited relief shall be permitted  
24 to file a suit, or to continue such a suit filed before the appointment  
25 of the Corporation as receiver, seeking a determination of the  
26 claimant’s rights with respect to such security interest after the  
27 earlier of—

28 “(i) the end of the 90-day period beginning on the date  
29 of the filing of a request for expedited relief; or

30 “(ii) the date the Corporation denies the claim.

31 “(D) STATUTE OF LIMITATIONS.—If an action described in  
32 subparagraph (C) is not filed, or the motion to renew a previously  
33 filed suit is not made, before the end of the 30-day period  
34 beginning on the date on which such action or motion may be filed  
35 in accordance with subparagraph (B), the claim shall be deemed to  
36 be disallowed as of the end of such period (other than any portion

1 of such claim which was allowed by the receiver), such  
2 disallowance shall be final, and the claimant shall have no further  
3 rights or remedies with respect to such claim.

4 “(E) LEGAL EFFECT OF FILING.—

5 “(i) STATUTE OF LIMITATION TOLLED.—For  
6 purposes of any applicable statute of limitations, the filing  
7 of a claim with the receiver shall constitute a  
8 commencement of an action.

9 “(ii) NO PREJUDICE TO OTHER ACTIONS.—Subject  
10 to paragraph (9), the filing of a claim with the receiver shall  
11 not prejudice any right of the claimant to continue any  
12 action which was filed before the appointment of the  
13 Corporation as receiver for the covered financial company.

14 “(7) AGREEMENTS AGAINST INTEREST OF THE RECEIVER.—  
15 No agreement that tends to diminish or defeat the interest of the  
16 Corporation as receiver in any asset acquired by the receiver under this  
17 section shall be valid against the receiver unless such agreement is in  
18 writing and executed by an authorized officer or representative of the  
19 covered financial company.

20 “(8) PAYMENT OF CLAIMS.—

21 “(A) IN GENERAL.--The Corporation as receiver may, in its  
22 discretion and to the extent funds are available, pay creditor claims,  
23 in such manner and amounts as are authorized under this section,  
24 which are—

25 “(i) allowed by the receiver;

26 “(ii) approved by the Corporation pursuant to a final  
27 determination pursuant to paragraph (6); or

28 “(iii) determined by the final judgment of any court of  
29 competent jurisdiction.

30 “(B) PAYMENT OF DIVIDENDS ON CLAIMS.--The receiver  
31 may, in the receiver's sole discretion and to the extent otherwise  
32 permitted by this section, pay dividends on proven claims at any  
33 time, and no liability shall attach to the Corporation (in the  
34 Corporation's corporate capacity or as receiver), by reason of any  
35 such payment, for failure to pay dividends to a claimant whose  
36 claim is not proved at the time of any such payment.

1 “(C) RULEMAKING AUTHORITY OF CORPORATION.--The  
2 Corporation may prescribe such rules, including definitions of  
3 terms, as it deems appropriate to establish a single uniform interest  
4 rate for, or to make payments of post insolvency interest to  
5 creditors holding proven claims against the receivership estates of  
6 a covered financial company following satisfaction by the receiver  
7 of the principal amount of all creditor claims.

8 “(9) SUSPENSION OF LEGAL ACTIONS.—

9 “(A) IN GENERAL.—After the appointment of the Corporation  
10 as conservator or receiver for a covered financial company, the  
11 Corporation may request a stay for a period not to exceed—

12 “(i) 45 days, in the case of any conservator; and

13 “(ii) 90 days, in the case of any receiver,

14 in any non-criminal judicial action or proceeding to which such  
15 covered financial company is or becomes a party.

16 “(B) GRANT OF STAY BY ALL COURTS REQUIRED.—  
17 Upon receipt of a request by the Corporation pursuant to  
18 subparagraph (A) for a stay of any non-criminal judicial action or  
19 proceeding in any court with jurisdiction of such action or  
20 proceeding, the court shall grant such stay as to all parties.

21 “(10) ADDITIONAL RIGHTS AND DUTIES.—

22 “(A) PRIOR FINAL ADJUDICATION.—The Corporation  
23 shall abide by any final unappealable judgment of any court of  
24 competent jurisdiction which was rendered before the appointment  
25 of the Corporation as conservator or receiver.

26 “(B) RIGHTS AND REMEDIES OF CONSERVATOR OR  
27 RECEIVER.—In the event of any appealable judgment, the  
28 Corporation as conservator or receiver shall—

29 “(i) have all the rights and remedies available to the  
30 covered financial company (before the appointment of the  
31 conservator or receiver under this section) and the  
32 Corporation, including but not limited to removal to  
33 Federal court and all appellate rights; and

34 “(ii) not be required to post any bond in order to pursue  
35 such remedies.

1 “(C) NO ATTACHMENT OR EXECUTION.—No attachment  
2 or execution may issue by any court upon assets in the possession  
3 of the receiver.

4 “(D) LIMITATION ON JUDICIAL REVIEW.—Except as  
5 otherwise provided in this subsection, no court shall have  
6 jurisdiction over—

7 “(i) any claim or action for payment from, or any action  
8 seeking a determination of rights with respect to, the assets  
9 of any covered financial company for which the  
10 Corporation has been appointed receiver, including any  
11 assets which the Corporation may acquire from itself as  
12 such receiver; or

13 “(ii) any claim relating to any act or omission of such  
14 covered financial company or the Corporation as receiver.

15 “(E) DISPOSITION OF ASSETS.—In exercising any right,  
16 power, privilege, or authority as conservator or receiver in  
17 connection with any covered financial company for which the  
18 Corporation is acting as conservator or receiver under this section,  
19 the Corporation shall, to the greatest extent practicable, conduct its  
20 operations in a manner which—

21 “(i) maximizes the net present value return from the sale  
22 or disposition of such assets;

23 “(ii) minimizes the amount of any loss realized in the  
24 resolution of cases;

25 “(iii) minimizes the cost to the general fund of the  
26 Treasury;

27 “(iv) mitigates the potential for serious adverse effects to  
28 the financial system and the U.S. economy;

29 “(v) ensures timely and adequate competition and fair  
30 and consistent treatment of offerors; and

31 “(vi) prohibits discrimination on the basis of race, sex, or  
32 ethnic groups in the solicitation and consideration of offers.

33 “(11) STATUTE OF LIMITATIONS FOR ACTIONS BROUGHT BY  
34 RECEIVER.—

1 “(A) IN GENERAL.—Notwithstanding any provision of any  
2 contract, the applicable statute of limitations with regard to any  
3 action brought by the Corporation as conservator or receiver shall  
4 be—

5 “(i) in the case of any contract claim, the longer of  
6 “(I) the 6-year period beginning on the date the  
7 claim accrues; or

8 “(II) the period applicable under State law; and

9 “(ii) in the case of any tort claim, the longer of—

10 “(I) the 3-year period beginning on the date the  
11 claim accrues; or

12 “(II) the period applicable under State law.

13 “(B) DETERMINATION OF THE DATE ON WHICH A  
14 CLAIM ACCRUES.—For purposes of subparagraph (A), the date  
15 on which the statute of limitations begins to run on any claim  
16 described in such subparagraph shall be the later of—

17 “(i) the date of the appointment of the Corporation as  
18 conservator or receiver under this Act; or

19 “(ii) the date on which the cause of action accrues.

20 “(C) REVIVAL OF EXPIRED STATE CAUSES OF  
21 ACTION.—

22 “(i) IN GENERAL.—In the case of any tort claim  
23 described in clause (ii) for which the statute of limitation  
24 applicable under State law with respect to such claim has  
25 expired not more than 5 years before the appointment of the  
26 Corporation as conservator or receiver, the Corporation  
27 may bring an action as conservator or receiver on such  
28 claim without regard to the expiration of the statute of  
29 limitation applicable under State law.

30 “(ii) CLAIMS DESCRIBED.—A tort claim referred to  
31 in clause (i) is a claim arising from fraud, intentional  
32 misconduct resulting in unjust enrichment, or intentional  
33 misconduct resulting in substantial loss to the covered  
34 financial company.

1           “(12) FRAUDULENT TRANSFERS.—

2                   “(A) IN GENERAL.—The Corporation, as conservator or  
3 receiver for any covered financial company, may avoid a transfer  
4 of any interest of an institution-affiliated party, or any person who  
5 the Corporation determines is a debtor of the covered financial  
6 company, in property, or any obligation incurred by such party or  
7 person, that was made within 5 years of the date on which the  
8 Corporation was appointed conservator or receiver if such party or  
9 person voluntarily or involuntarily made such transfer or incurred  
10 such liability with the intent to hinder, delay, or defraud the  
11 covered financial company or the Corporation.

12                   “(B) RIGHT OF RECOVERY.—To the extent a transfer is  
13 avoided under subparagraph (A), the Corporation may recover, for  
14 the benefit of the covered financial company, the property  
15 transferred or, if a court so orders, the value of such property (at  
16 the time of such transfer) from—

17                           “(i) the initial transferee of such transfer or the  
18 institution-affiliated party or person for whose benefit such  
19 transfer was made; or

20                           “(ii) any immediate or mediate transferee of any such  
21 initial transferee.

22                   “(C) RIGHTS OF TRANSFEREE OR OBLIGEE.—The  
23 Corporation may not recover under subparagraph (B)—

24                           “(i) any transfer that takes for value, including  
25 satisfaction or securing of a present or antecedent debt, in  
26 good faith, or

27                           “(ii) any immediate or mediate good faith transferee of  
28 such transferee.

29                   “(D) RIGHTS UNDER THIS PARAGRAPH.—The rights of the  
30 Corporation as receiver of a covered financial company under this  
31 paragraph shall be superior to any rights of a trustee or any other  
32 party (other than any party which is a Federal agency) under title  
33 11, United States Code.

34                   “(E) DEFINITION.—For purposes of this paragraph, the term  
35 institution-affiliated party” means—

36                           “(i) any director, officer, employee, or controlling  
37 stockholder of, or agent for, a covered financial company;

1                   “(ii) any shareholder, consultant, joint venture partner,  
2                   and any other person as determined by the Corporation (by  
3                   regulation or otherwise) who participates in the conduct of  
4                   the affairs of a covered financial company; and

5                   “(iii) any independent contractor (including any attorney,  
6                   appraiser, or accountant) who knowingly or recklessly  
7                   participates in—

8                               “(I) any violation of any law or regulation;

9                               “(II) any breach of fiduciary duty; or

10                              “(III) any unsafe or unsound practice,

11                   which caused or is likely to cause more than a minimal financial  
12                   loss to, or a significant adverse effect on, the covered financial  
13                   company.

14                   “(13) ATTACHMENT OF ASSETS AND OTHER INJUNCTIVE  
15                   RELIEF.—Subject to paragraph (14), any court of competent jurisdiction  
16                   may, at the request of the Corporation, issue an order in accordance with  
17                   Rule 65 of the Federal Rules of Civil Procedure, including an order  
18                   placing the assets of any person designated by the Corporation under the  
19                   control of the court and appointing a trustee to hold such assets.

20                   “(14) STANDARDS.—

21                               “(A) SHOWING.—Rule 65 of the Federal Rules of Civil  
22                   Procedure shall apply with respect to any proceeding under  
23                   paragraph (13) without regard to the requirement of such rule that  
24                   the applicant show that the injury, loss, or damage is irreparable  
25                   and immediate.

26                               “(B) STATE PROCEEDING.—If, in the case of any proceeding  
27                   in a State court, the court determines that rules of civil procedure  
28                   available under the laws of such State provide substantially similar  
29                   protections to such party’s right to due process as Rule 65 (as  
30                   modified with respect to such proceeding by subparagraph (A)),  
31                   the relief sought by the Corporation to paragraph (14) may be  
32                   requested under the laws of such State.

33                   “(15) TREATMENT OF CLAIMS ARISING FROM BREACH OF  
34                   CONTRACTS EXECUTED BY THE CORPORATION AS RECEIVER  
35                   OR CONSERVATOR.—Notwithstanding any other provision of this  
36                   subsection, any final and unappealable judgment for monetary damages  
37                   entered against the Corporation as receiver or conservator for a covered

1 financial company for the breach of an agreement executed or approved  
2 by the Corporation after the date of its appointment shall be paid as an  
3 administrative expense of the receiver or conservator. Nothing in this  
4 paragraph shall be construed to limit the power of a receiver or  
5 conservator to exercise any rights under contract or law, including to  
6 terminate, breach, cancel, or otherwise discontinue such agreement.

7 “(16) ACCOUNTING AND RECORDKEEPING REQUIREMENTS.—

8 “(A) IN GENERAL.—The Corporation as conservator or  
9 receiver shall, consistent with the accounting and reporting  
10 practices and procedures established by the Corporation, maintain  
11 a full accounting of each conservatorship, receivership or other  
12 disposition of any covered financial company.

13 “(B) ANNUAL ACCOUNTING OR REPORT.—With respect  
14 to each conservatorship or receivership to which the Corporation  
15 was appointed, the Corporation shall make an annual accounting or  
16 report, as appropriate, available to the Secretary and the  
17 Comptroller General of the United States.

18 “(C) AVAILABILITY OF REPORTS.—Any report prepared  
19 pursuant to subparagraph (B) shall be made available by the  
20 Corporation upon request to any member of the public.

21 “(D) RECORDKEEPING REQUIREMENT.—

22 “(i) IN GENERAL.—Except as provided in clause (ii),  
23 after the end of the 6-year period beginning on the date the  
24 Corporation is appointed as receiver of a covered financial  
25 company the Corporation may destroy any records of such  
26 covered financial company which the Corporation, in the  
27 Corporation’s discretion, determines to be unnecessary  
28 unless directed not to do so by a court of competent  
29 jurisdiction or governmental agency, or prohibited by law.

30 “(ii) OLD RECORDS.—Notwithstanding clause (i), the  
31 Corporation may destroy records of a covered financial  
32 company which are at least 10 years old as of the date on  
33 which the Corporation is appointed as the receiver of such  
34 company in accordance with clause (i) at any time after  
35 such appointment is final, without regard to the 6-year  
36 period of limitation contained in clause (i).

37 “(i) PRIORITY OF EXPENSES AND UNSECURED CLAIMS.—

1 “(1) IN GENERAL.—Unsecured claims against a covered financial  
2 company, or the receiver for such covered financial company under this  
3 section, that are proven to the satisfaction of the receiver shall have  
4 priority in the following order:

5 “(A) Administrative expenses of the receiver.

6 “(B) Any amounts owed to the United States.

7 “(C) Any other general or senior liability of the covered  
8 financial company (which is not a liability described under  
9 subparagraph (D) or (E)).

10 “(D) Any obligation subordinated to general creditors (which is  
11 not an obligation described under subparagraph (E)).

12 “(E) Any obligation to shareholders, members, general partners,  
13 limited partners or other persons with interests in the equity of the  
14 covered financial company arising as a result of their status as  
15 shareholders, members, general partners, limited partners or other  
16 persons with interests in the equity of the covered financial  
17 company.

18 “(2) CREDITORS SIMILARLY SITUATED.—All claimants of a  
19 covered financial company that are similarly situated under paragraph (1)  
20 shall be treated in a similar manner, except that the receiver may take any  
21 action (including making payments) that does not comply with this  
22 subsection, if—

23 “(A) the Corporation determines that such action is necessary to  
24 maximize the value of the assets of the covered financial company,  
25 to maximize the present value return from the sale or other  
26 disposition of the assets of the covered financial company, to  
27 minimize the amount of any loss realized upon the sale or other  
28 disposition of the assets of the covered financial company, or to  
29 contain or address serious adverse effects on financial stability or  
30 the U.S. economy; and

31 “(B) all claimants that are similarly situated under paragraph (1)  
32 receive not less than the amount provided in subsection (k)(2).

33 “(3) DEFINITIONS.—As used in this subsection, the term  
34 ‘administrative expenses of the receiver’ includes—

35 “(A) the actual, necessary costs and expenses incurred by the  
36 receiver in preserving the assets of a covered financial company or  
37 liquidating or otherwise resolving the affairs of a covered financial

1 company for which the Corporation has been appointed as receiver;  
2 and

3 “(B) any obligations that the receiver determines are necessary  
4 and appropriate to facilitate the smooth and orderly liquidation or  
5 other resolution of the covered financial company.

6 “(j) PROVISIONS RELATING TO CONTRACTS ENTERED INTO  
7 BEFORE APPOINTMENT OF CONSERVATOR OR RECEIVER.

8 “(1) AUTHORITY TO REPUDIATE CONTRACTS.—In addition to  
9 any other rights a conservator or receiver may have, the Corporation as  
10 conservator or receiver for any covered financial company may disaffirm  
11 or repudiate any contract or lease—

12 “(A) to which the covered financial company is a party;

13 “(B) the performance of which the conservator or receiver, in the  
14 conservator’s or receiver’s discretion, determines to be  
15 burdensome; and

16 “(C) the disaffirmance or repudiation of which the conservator  
17 or receiver determines, in the conservator’s or receiver’s discretion,  
18 will promote the orderly administration of the covered financial  
19 company’s affairs.

20 “(2) TIMING OF REPUDIATION.—The conservator or receiver  
21 appointed for any covered financial company in accordance with  
22 subsection (c) shall determine whether or not to exercise the rights of  
23 repudiation under this subsection within a reasonable period following  
24 such appointment.

25 “(3) CLAIMS FOR DAMAGES FOR REPUDIATION.—

26 “(A) IN GENERAL.—Except as otherwise provided in  
27 subparagraph (C) and paragraphs (4), (5), and (6), the liability of  
28 the conservator or receiver for the disaffirmance or repudiation of  
29 any contract pursuant to paragraph (1) shall be—

30 “(i) limited to actual direct compensatory damages; and

31 “(ii) determined as of—

32 “(I) the date of the appointment of the  
33 conservator or receiver; or



1                                   “(II) the disaffirmance or repudiation becomes  
2                                   effective, unless the lessor is in default or breach of  
3                                   the terms of the lease;

4                                   “(ii) have no claim for damages under any acceleration  
5                                   clause or other penalty provision in the lease; and

6                                   “(iii) have a claim for any unpaid rent, subject to all  
7                                   appropriate offsets and defenses, due as of the date of the  
8                                   appointment which shall be paid in accordance with this  
9                                   subsection and subsection (k).

10                   “(5) LEASES UNDER WHICH THE COVERED FINANCIAL  
11                   COMPANY IS THE LESSOR.—

12                                   “(A) IN GENERAL.—If the conservator or receiver repudiates  
13                                   an unexpired written lease of real property of the covered financial  
14                                   company under which the covered financial company is the lessor  
15                                   and the lessee is not, as of the date of such repudiation, in default,  
16                                   the lessee under such lease may either—

17                                   “(i) treat the lease as terminated by such repudiation; or

18                                   “(ii) remain in possession of the leasehold interest for the  
19                                   balance of the term of the lease unless the lessee defaults  
20                                   under the terms of the lease after the date of such  
21                                   repudiation.

22                                   “(B) PROVISIONS APPLICABLE TO LESSEE REMAINING  
23                                   IN POSSESSION.—If any lessee under a lease described in  
24                                   subparagraph (A) remains in possession of a leasehold interest  
25                                   pursuant to clause (ii) of such subparagraph—

26                                   “(i) the lessee—

27                                   “(I) shall continue to pay the contractual rent  
28                                   pursuant to the terms of the lease after the date of  
29                                   the repudiation of such lease;

30                                   “(II) may offset against any rent payment which  
31                                   accrues after the date of the repudiation of the lease,  
32                                   any damages which accrue after such date due to  
33                                   the nonperformance of any obligation of the  
34                                   covered financial company under the lease after  
35                                   such date; and

1                   “(ii) the conservator or receiver shall not be liable to the  
2                   lessee for any damages arising after such date as a result of  
3                   the repudiation other than the amount of any offset allowed  
4                   under clause (i)(II).

5           “(6) CONTRACTS FOR THE SALE OF REAL PROPERTY.—

6                   “(A) IN GENERAL.--If the conservator or receiver repudiates  
7                   any contract (which meets the requirements of subsection (h)(7) of  
8                   this section) for the sale of real property and the purchaser of such  
9                   real property under such contract is in possession and is not, as of  
10                  the date of such repudiation, in default, such purchaser may  
11                  either—

12                   “(i) treat the contract as terminated by such repudiation;  
13                   or

14                   “(ii) remain in possession of such real property.

15                   “(B) PROVISIONS APPLICABLE TO PURCHASER  
16                   REMAINING IN POSSESSION.--If any purchaser of real  
17                   property under any contract described in subparagraph (A) remains  
18                   in possession of such property pursuant to clause (ii) of such  
19                   subparagraph—

20                   “(i) the purchaser—

21                   “(I) shall continue to make all payments due  
22                   under the contract after the date of the repudiation  
23                   of the contract; and

24                   “(II) may offset against any such payments any  
25                   damages which accrue after such date due to the  
26                   nonperformance (after such date) of any obligation  
27                   of the covered financial company under the contract;  
28                   and

29                   “(ii) the conservator or receiver shall—

30                   “(I) not be liable to the purchaser for any  
31                   damages arising after such date as a result of the  
32                   repudiation other than the amount of any offset  
33                   allowed under clause (i)(II);

34                   “(II) deliver title to the purchaser in accordance  
35                   with the provisions of the contract; and



1 “(C) ACCEPTANCE OF PERFORMANCE NO BAR TO  
2 SUBSEQUENT REPUDIATION.—The acceptance by any  
3 conservator or receiver of services referred to in subparagraph (B)  
4 in connection with a contract described in such subparagraph shall  
5 not affect the right of the conservator or receiver to repudiate such  
6 contract under this section at any time after such performance.

7 “(8) CERTAIN QUALIFIED FINANCIAL CONTRACTS.—

8 “(A) RIGHTS OF PARTIES TO CONTRACTS.—Subject to  
9 paragraphs (9) and (10) of this subsection and notwithstanding any  
10 other provision of this section (other than subsection (h)(8) of this  
11 section), any other Federal law, or the law of any State, no person  
12 shall be stayed or prohibited from exercising—

13 “(i) any right such person has to cause the termination,  
14 liquidation, or acceleration of any qualified financial  
15 contract with a covered financial company which arises  
16 upon the appointment of the Corporation as receiver for  
17 such covered financial company at any time after such  
18 appointment;

19 “(ii) any right under any security agreement or  
20 arrangement or other credit enhancement related to one or  
21 more qualified financial contracts described in clause (i).

22 “(iii) any right to offset or net out any termination value,  
23 payment amount, or other transfer obligation arising under  
24 or in connection with 1 or more contracts and agreements  
25 described in clause (i), including any master agreement for  
26 such contracts or agreements.

27 “(B) APPLICABILITY OF OTHER PROVISIONS.—  
28 Subsection (h)(10) shall apply in the case of any judicial action or  
29 proceeding brought against any receiver referred to in  
30 subparagraph (A), or the covered financial company for which  
31 such receiver was appointed, by any party to a contract or  
32 agreement described in subparagraph (A)(i) with such company.

33 “(C) CERTAIN TRANSFERS NOT AVOIDABLE.—

34 “(i) IN GENERAL.—Notwithstanding paragraph (11),  
35 section 5242 of the Revised Statutes of the United States or  
36 any other provision of Federal or State law relating to the  
37 avoidance of preferential or fraudulent transfers, the  
38 Corporation, whether acting as such or as conservator or  
39 receiver of a covered financial company, may not avoid any

1 transfer of money or other property in connection with any  
2 qualified financial contract with a covered financial  
3 company.

4 “(ii) EXCEPTION FOR CERTAIN TRANSFERS.  
5 Clause (i) shall not apply to any transfer of money or other  
6 property in connection with any qualified financial contract  
7 with a covered financial company if the Corporation  
8 determines that the transferee had actual intent to hinder,  
9 delay, or defraud such company, the creditors of such  
10 company, or any conservator or receiver appointed for such  
11 company.

12 “(D) CERTAIN CONTACTS AND AGREEMENTS  
13 DEFINED.—For purposes of this subsection, the following  
14 definitions shall apply:

15 “(i) QUALIFIED FINANCIAL CONTRACT.—The  
16 term “qualified financial contract” means any securities  
17 contract, commodity contract, forward contract, repurchase  
18 agreement, swap agreement, and any similar agreement that  
19 the Corporation determines by regulation, resolution, or  
20 order to be a qualified financial contract for purposes of  
21 this paragraph.

22 “(ii) SECURITIES CONTRACT.—The term “securities  
23 contract”—

24 “(I) means a contract for the purchase, sale, or  
25 loan of a security, a certificate of deposit, a  
26 mortgage loan, any interest in a mortgage loan, a  
27 group or index of securities, certificates of deposit,  
28 or mortgage loans or interests therein (including any  
29 interest therein or based on the value thereof) or any  
30 option on any of the foregoing, including any option  
31 to purchase or sell any such security, certificate of  
32 deposit, mortgage loan, interest, group or index, or  
33 option, and including any repurchase or reverse  
34 repurchase transaction on any such security,  
35 certificate of deposit, mortgage loan, interest, group  
36 or index, or option (whether or not such repurchase  
37 or reverse repurchase transaction is a “repurchase  
38 agreement,” as defined in clause (v));

39 “(II) does not include any purchase, sale, or  
40 repurchase obligation under a participation in a  
41 commercial mortgage loan unless the Corporation

1 determines by regulation, resolution, or order to  
2 include any such agreement within the meaning of  
3 such term;

4 “(III) means any option entered into on a national  
5 securities exchange relating to foreign currencies;

6 “(IV) means the guarantee (including by novation)  
7 by or to any securities clearing agency of any  
8 settlement of cash, securities, certificates of deposit,  
9 mortgage loans or interests therein, group or index  
10 of securities, certificates of deposit or mortgage  
11 loans or interests therein (including any interest  
12 therein or based on the value thereof) or option on  
13 any of the foregoing, including any option to  
14 purchase or sell any such security, certificate of  
15 deposit, mortgage loan, interest, group or index, or  
16 option (whether or not such settlement is in  
17 connection with any agreement or transaction  
18 referred to in subclauses (I) through (XII) (other  
19 than subclause (II));

20 “(V) means any margin loan;

21 “(VI) means any extension of credit for the  
22 clearance or settlement of securities transactions;

23 “(VII) means any loan transaction coupled with a  
24 securities collar transaction, any prepaid securities  
25 forward transaction, or any total return swap  
26 transaction coupled with a securities sale transaction;

27 “(VIII) means any other agreement or transaction  
28 that is similar to any agreement or transaction  
29 referred to in this clause;

30 “(IX) means any combination of the agreements or  
31 transactions referred to in this clause;

32 “(X) means any option to enter into any  
33 agreement or transaction referred to in this clause;

34 “(XI) means a master agreement that provides for  
35 an agreement or transaction referred to in subclause  
36 (I), (III), (IV), (V), (VI), (VII), (VIII), (IX), or (X),  
37 together with all supplements to any such master  
38 agreement, without regard to whether the master

1 agreement provides for an agreement or transaction  
2 that is not a securities contract under this clause,  
3 except that the master agreement shall be  
4 considered to be a securities contract under this  
5 clause only with respect to each agreement or  
6 transaction under the master agreement that is  
7 referred to in subclause (I), (III), (IV), (V), (VI),  
8 (VII), (VIII), (IX), or (X); and

9 “(XII) means any security agreement or  
10 arrangement or other credit enhancement related to  
11 any agreement or transaction referred to in this  
12 clause, including any guarantee or reimbursement  
13 obligation in connection with any agreement or  
14 transaction referred to in this clause.

15 “(iii) COMMODITY CONTRACT.—The term  
16 “commodity contract” means—

17 “(I) with respect to a futures commission  
18 merchant, a contract for the purchase or sale of a  
19 commodity for future delivery on, or subject to the  
20 rules of, a contract market or board of trade;

21 “(II) with respect to a foreign futures commission  
22 merchant, a foreign future;

23 “(III) with respect to a leverage transaction  
24 merchant, a leverage transaction;

25 “(IV) with respect to a clearing organization, a  
26 contract for the purchase or sale of a commodity for  
27 future delivery on, or subject to the rules of, a  
28 contract market or board of trade that is cleared by  
29 such clearing organization, or commodity option  
30 traded on, or subject to the rules of, a contract  
31 market or board of trade that is cleared by such  
32 clearing organization;

33 “(V) with respect to a commodity options dealer,  
34 a commodity option;

35 “(VI) any other agreement or transaction that is  
36 similar to any agreement or transaction referred to  
37 in this clause;

1 “(VII) any combination of the agreements or  
2 transactions referred to in this clause;

3 “(VIII) any option to enter into any agreement or  
4 transaction referred to in this clause;

5 “(IX) a master agreement that provides for an  
6 agreement or transaction referred to in subclause (I),  
7 (II), (III), (IV), (V), (VI), (VII), or (VIII), together  
8 with all supplements to any such master agreement,  
9 without regard to whether the master agreement  
10 provides for an agreement or transaction that is not  
11 a commodity contract under this clause, except that  
12 the master agreement shall be considered to be a  
13 commodity contract under this clause only with  
14 respect to each agreement or transaction under the  
15 master agreement that is referred to in subclause (I),  
16 (II), (III), (IV), (V), (VI), (VII), or (VIII); or

17 “(X) any security agreement or arrangement or  
18 other credit enhancement related to any agreement  
19 or transaction referred to in this clause, including  
20 any guarantee or reimbursement obligation in  
21 connection with any agreement or transaction  
22 referred to in this clause.

23 “(iv) FORWARD CONTRACT.—The term “forward  
24 contract” means—

25 “(I) a contract (other than a commodity contract)  
26 for the purchase, sale, or transfer of a commodity or  
27 any similar good, article, service, right, or interest  
28 which is presently or in the future becomes the  
29 subject of dealing in the forward contract trade, or  
30 product or byproduct thereof, with a maturity date  
31 more than 2 days after the date the contract is  
32 entered into, including a repurchase or reverse  
33 repurchase transaction (whether or not such  
34 repurchase or reverse repurchase transaction is a  
35 “repurchase agreement”, as defined in clause (v)),  
36 consignment, lease, swap, hedge transaction,  
37 deposit, loan, option, allocated transaction,  
38 unallocated transaction, or any other similar  
39 agreement;

40 “(II) any combination of agreements or  
41 transactions referred to in subclauses (I) and (III);

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“(III) any option to enter into any agreement or transaction referred to in subclause (I) or (II);

“(IV) a master agreement that provides for an agreement or transaction referred to in subclauses (I), (II), or (III), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a forward contract under this clause, except that the master agreement shall be considered to be a forward contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), or (III); or

“(V) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (II), (III), or (IV), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

“(v) REPURCHASE AGREEMENT.—The term “repurchase agreement” (which definition also applies to a reverse repurchase agreement)—

“(I) means an agreement, including related terms, which provides for the transfer of one or more certificates of deposit, mortgage-related securities (as such term is defined in the Securities Exchange Act of 1934), mortgage loans, interests in mortgage-related securities or mortgage loans, eligible bankers’ acceptances, qualified foreign government securities (which for these purpose shall mean a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development as determined by regulation or order adopted by the Federal Reserve Board) or securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers’ acceptances, securities, mortgage loans, or interests with a simultaneous agreement by such

1 transferee to transfer to the transferor thereof  
2 certificates of deposit, eligible bankers' acceptances,  
3 securities, mortgage loans, or interests as described  
4 above, at a date certain not later than 1 year after  
5 such transfers or on demand, against the transfer of  
6 funds, or any other similar agreement;

7 “(II) does not include any repurchase obligation  
8 under a participation in a commercial mortgage loan  
9 unless the Corporation determines by regulation,  
10 resolution, or order to include any such participation  
11 within the meaning of such term;

12 “(III) means any combination of agreements or  
13 transactions referred to in subclauses (I) and (IV);

14 “(IV) means any option to enter into any  
15 agreement or transaction referred to in subclause (I)  
16 or (III);

17 “(V) means a master agreement that provides for  
18 an agreement or transaction referred to in subclause  
19 (I), (III), or (IV), together with all supplements to  
20 any such master agreement, without regard to  
21 whether the master agreement provides for an  
22 agreement or transaction that is not a repurchase  
23 agreement under this clause, except that the master  
24 agreement shall be considered to be a repurchase  
25 agreement under this subclause only with respect to  
26 each agreement or transaction under the master  
27 agreement that is referred to in subclause (I), (III),  
28 or (IV); and

29 “(VI) means any security agreement or  
30 arrangement or other credit enhancement related to  
31 any agreement or transaction referred to in  
32 subclause (I), (III), (IV), or (V), including any  
33 guarantee or reimbursement obligation in  
34 connection with any agreement or transaction  
35 referred to in any such subclause.

36 “(vi) SWAP AGREEMENT.—The term “swap  
37 agreement” means—

38 “(I) any agreement, including the terms and  
39 conditions incorporated by reference in any such  
40 agreement, which is an interest rate swap, option,

1 future, or forward agreement, including a rate floor,  
2 rate cap, rate collar, cross-currency rate swap, and  
3 basis swap; a spot, same day-tomorrow, tomorrow-  
4 next, forward, or other foreign exchange, precious  
5 metals, or other commodity agreement; a currency  
6 swap, option, future, or forward agreement; an  
7 equity index or equity swap, option, future, or  
8 forward agreement; a debt index or debt swap,  
9 option, future, or forward agreement; a total return,  
10 credit spread or credit swap, option, future, or  
11 forward agreement; a commodity index or  
12 commodity swap, option, future, or forward  
13 agreement; weather swap, option, future, or forward  
14 agreement; an emissions swap, option, future, or  
15 forward agreement; or an inflation swap, option,  
16 future, or forward agreement;

17 “(II) any agreement or transaction that is similar  
18 to any other agreement or transaction referred to in  
19 this clause and that is of a type that has been, is  
20 presently, or in the future becomes, the subject of  
21 recurrent dealings in the swap or other derivatives  
22 markets (including terms and conditions  
23 incorporated by reference in such agreement) and  
24 that is a forward, swap, future, option or spot  
25 transaction on one or more rates, currencies,  
26 commodities, equity securities or other equity  
27 instruments, debt securities or other debt  
28 instruments, quantitative measures associated with  
29 an occurrence, extent of an occurrence, or  
30 contingency associated with a financial, commercial,  
31 or economic consequence, or economic or financial  
32 indices or measures of economic or financial risk or  
33 value;

34 “(III) any combination of agreements or  
35 transactions referred to in this clause;

36 “(IV) any option to enter into any agreement or  
37 transaction referred to in this clause;

38 “(V) a master agreement that provides for an  
39 agreement or transaction referred to in subclause (I),  
40 (II), (III), or (IV), together with all supplements to  
41 any such master agreement, without regard to  
42 whether the master agreement contains an

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agreement or transaction that is not a swap agreement under this clause, except that the master agreement shall be considered to be a swap agreement under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), or (IV); and

“(VI) any security agreement or arrangement or other credit enhancement related to any agreements or transactions referred to in subclause (I), (II), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

“(vii) DEFINITIONS RELATING TO DEFAULT.—  
When used in this paragraph and paragraph (10)—

“(I) The term "default" shall mean, with respect to a covered financial company, any adjudication or other official determination by any court of competent jurisdiction, or other public authority pursuant to which a conservator, receiver, or other legal custodian is appointed; and

“(II) The term "in danger of default" shall mean a covered financial company with respect to which the Corporation or appropriate State authority has determined that—

“(aa) in the opinion of the Corporation or such authority—

“(i) the covered financial company is not likely to be able to pay its obligations in the normal course of business; and

“(ii) there is no reasonable prospect that the covered financial company will be able to pay such obligations without Federal assistance; or

“(bb) in the opinion of the Corporation or

1 such authority—  
2

3 “(i) the covered financial company  
4 has incurred or is likely to incur  
5 losses that will deplete all or  
6 substantially all of its capital; and  
7

8 “(ii) there is no reasonable prospect  
9 that the capital will be replenished  
10 without Federal assistance.  
11

12 “(viii) TREATMENT OF MASTER AGREEMENT AS  
13 ONE AGREEMENT.—Any master agreement for any  
14 contract or agreement described in any preceding clause of  
15 this subparagraph (or any master agreement for such master  
16 agreement or agreements), together with all supplements to  
17 such master agreement, shall be treated as a single  
18 agreement and a single qualified financial contact. If a  
19 master agreement contains provisions relating to  
20 agreements or transactions that are not themselves qualified  
21 financial contracts, the master agreement shall be deemed  
22 to be a qualified financial contract only with respect to  
23 those transactions that are themselves qualified financial  
24 contracts.  
25

26 “(ix) TRANSFER.—The term “transfer” means every  
27 mode, direct or indirect, absolute or conditional, voluntary  
28 or involuntary, of disposing of or parting with property or  
29 with an interest in property, including retention of title as a  
30 security interest and foreclosure of the covered financial  
31 company’s equity of redemption.

32 “(x) PERSON.—The term “person” includes any  
33 governmental entity in addition to any entity included in  
34 the definition of such term in section 1, title 1, United  
35 States Code.

36 “(E) CERTAIN PROTECTIONS IN EVENT OF  
37 APPOINTMENT OF CONSERVATOR.—Notwithstanding any  
38 other provision of this section (other than paragraph (10) of this  
39 subsection and subsection (h)(7)) of this section), any other Federal  
40 law, or the law of any State, no person shall be stayed or prohibited  
41 from exercising—

42 “(i) any right such person has to cause the termination,  
43 liquidation, or acceleration of any qualified financial

1 contract with a covered financial company in a  
2 conservatorship based upon a default under such financial  
3 contract which is enforceable under applicable  
4 noninsolvency law;

5 “(ii) any right under any security agreement or  
6 arrangement or other credit enhancement related to one or  
7 more qualified financial contracts described in clause (i); or

8 “(iii) any right to offset or net out any termination values,  
9 payment amounts, or other transfer obligations arising  
10 under or in connection with such qualified financial  
11 contracts.

12 “(F) CLARIFICATION.—No provision of law shall be  
13 construed as limiting the right or power of the Corporation, or  
14 authorizing any court or agency to limit or delay, in any manner,  
15 the right or power of the Corporation to transfer any qualified  
16 financial contract in accordance with paragraphs (9) and (10) of  
17 this subsection or to disaffirm or repudiate any such contract in  
18 accordance with subsection (j)(1) of this section.

19 “(G) WALKAWAY CLAUSES NOT EFFECTIVE.—

20 “(i) IN GENERAL.—Notwithstanding the provisions of  
21 subparagraphs (A) and (E) and sections 403 and 404 of the  
22 Federal Deposit Insurance Corporation Improvement Act of  
23 1991, no walkaway clause shall be enforceable in a  
24 qualified financial contract of a covered financial company  
25 in default.

26 “(ii) LIMITED SUSPENSION OF CERTAIN  
27 OBLIGATIONS.—In the case of a qualified financial  
28 contract referred to in clause (i), any payment or delivery  
29 obligations otherwise due from a party pursuant to the  
30 qualified financial contract shall be suspended from the  
31 time the receiver is appointed until the earlier of—

32 “(I) the time such party receives notice that such  
33 contract has been transferred pursuant to paragraph  
34 (10)(A); or

35 “(II) 5:00 p.m. (eastern time) on the business day  
36 following the date of the appointment of the  
37 receiver.

1 “(iii) WALKAWAY CLAUSE DEFINED.—For  
2 purposes of this subparagraph, the term ‘walkaway clause’  
3 means any provision in a qualified financial contract that  
4 suspends, conditions, or extinguishes a payment obligation  
5 of a party, in whole or in part, or does not create a payment  
6 obligation of a party that would otherwise exist, solely  
7 because of such party’s status as a nondefaulting party in  
8 connection with the insolvency of a covered financial  
9 company that is a party to the contract or the appointment  
10 of or the exercise of rights or powers by a conservator or  
11 receiver of such covered financial company, and not as a  
12 result of a party’s exercise of any right to offset, setoff, or  
13 net obligations that exist under the contract, any other  
14 contract between those parties, or applicable law.

15 “(H) RECORDKEEPING.—The Corporation, in consultation  
16 with the appropriate Federal supervisor for a covered financial  
17 company (if any), may prescribe regulations requiring that the  
18 covered financial company maintain such records with respect to  
19 qualified financial contracts (including market valuations) as the  
20 Corporation determines to be necessary or appropriate in order to  
21 assist the conservator or receiver of the covered financial company  
22 in being able to exercise its rights and fulfill its obligations under  
23 this paragraph or paragraphs (9) or (10).

24 “(9) TRANSFER OF QUALIFIED FINANCIAL CONTRACTS.—

25 “(A) IN GENERAL.—In making any transfer of assets or  
26 liabilities of a covered financial company in default which includes  
27 any qualified financial contract, the conservator or receiver for  
28 such covered financial company shall either—

29 “(i) transfer to one financial institution, other than a  
30 financial institution for which a conservator, receiver,  
31 trustee in bankruptcy, or other legal custodian has been  
32 appointed or which is otherwise the subject of a bankruptcy  
33 or insolvency proceeding—

34 “(I) all qualified financial contracts between any  
35 person or any affiliate of such person and the  
36 covered financial company in default ;

37 “(II) all claims of such person or any affiliate of  
38 such person against such covered financial company  
39 under any such contract (other than any claim which,  
40 under the terms of any such contract, is



1 institution, and the term ‘clearing organization’ has the same  
2 meaning as in section 402 of the Federal Deposit Insurance  
3 Corporation Improvement Act of 1991.

4 “(10) NOTIFICATION OF TRANSFER.—

5 “(A) IN GENERAL.—If—

6 “(i) the conservator or receiver for a covered financial  
7 company in default or in danger of default transfers any  
8 assets and liabilities of the covered financial company; and

9 “(ii) the transfer includes any qualified financial contract,

10 the conservator or receiver shall notify any person who is a party to  
11 any such contract of such transfer by 5:00 p.m. (eastern time) on  
12 the business day following the date of the appointment of the  
13 receiver in the case of a receivership, or the business day following  
14 such transfer in the case of a conservatorship.

15 “(B) CERTAIN RIGHTS NOT ENFORCEABLE.—

16 “(i) RECEIVERSHIP.—A person who is a party to a  
17 qualified financial contract with a covered financial  
18 company may not exercise any right that such person has to  
19 terminate, liquidate, or net such contract under paragraph  
20 (8)(A) of this subsection solely by reason of or incidental to  
21 the appointment under this section of a receiver for the  
22 covered financial company (or the insolvency or financial  
23 condition of the covered financial company for which the  
24 receiver has been appointed)—

25 “(I) until 5:00 p.m. (eastern time) on the  
26 business day following the date of the appointment  
27 of the receiver; or

28 “(II) after the person has received notice that the  
29 contract has been transferred pursuant to paragraph  
30 (9)(A).

31 “(ii) CONSERVATORSHIP.—A person who is a party to a  
32 qualified financial contract with a covered financial  
33 company may not exercise any right such person has to  
34 terminate, liquidate, or net such contract under paragraph  
35 (8)(E) of this subsection or section 403 of Federal Deposit  
36 Insurance Corporation Improvement Act of 1991 solely by  
37 reason of or incidental to the appointment under this

1 section of a conservator for the covered financial company  
2 (or the insolvency or financial condition of the covered  
3 financial company for which the conservator has been  
4 appointed).

5 “(iii) NOTICE.—For purposes of this paragraph, the  
6 receiver or conservator for a covered financial company  
7 shall be deemed to have notified a person who is a party to  
8 a qualified financial contract with such covered financial  
9 company if the receiver or conservator has taken steps  
10 reasonably calculated to provide notice to such person by  
11 the time specified in subparagraph (A).

12 “(C) TREATMENT OF BRIDGE FINANCIAL COMPANY.—  
13 For purposes of paragraph (9), a bridge financial company shall  
14 not be considered to be a covered financial company for which a  
15 conservator, receiver, trustee in bankruptcy, or other legal  
16 custodian has been appointed or which is otherwise the subject of a  
17 bankruptcy or insolvency proceeding.

18 “(D) BUSINESS DAY DEFINED.—For purposes of this  
19 paragraph, the term “business day” means any day other than any  
20 Saturday, Sunday, or any day on which either the New York Stock  
21 Exchange or the Federal Reserve Bank of New York is closed.

22 “(11) DISAFFIRMANCE OR REPUDIATION OF QUALIFIED  
23 FINANCIAL CONTRACTS.—In exercising the rights of disaffirmance or  
24 repudiation of a conservator or receiver with respect to any qualified  
25 financial contract to which a covered financial company is a party, the  
26 conservator or receiver for such covered financial company shall either—

27 “(A) disaffirm or repudiate all qualified financial contracts  
28 between—

29 “(i) any person or any affiliate of such person; and

30 “(ii) the covered financial company in default; or

31 “(B) disaffirm or repudiate none of the qualified financial  
32 contracts referred to in subparagraph (A) (with respect to such  
33 person or any affiliate of such person).

34 “(12) CERTAIN SECURITY AND CUSTOMER INTERESTS NOT  
35 AVOIDABLE.—No provision of this subsection shall be construed as  
36 permitting the avoidance of any—

1 “(A) legally enforceable or perfected security interest in any of  
2 the assets of any covered financial company except where such an  
3 interest is taken in contemplation of the company’s insolvency or  
4 with the intent to hinder, delay, or defraud the company or the  
5 creditors of such company; or

6 “(B) legally enforceable interest in customer property.

7 “(13) AUTHORITY TO ENFORCE CONTRACTS.—

8 “(A) IN GENERAL.—The conservator or receiver may enforce  
9 any contract, other than a director’s or officer’s liability insurance  
10 contract or a financial institution bond, entered into by the covered  
11 financial company notwithstanding any provision of the contract  
12 providing for termination, default, acceleration, or exercise of  
13 rights upon, or solely by reason of, insolvency or the appointment  
14 of or the exercise of rights or powers by a conservator or receiver.

15 “(B) CERTAIN RIGHTS NOT AFFECTED.—No provision of  
16 this paragraph may be construed as impairing or affecting any right  
17 of the conservator or receiver to enforce or recover under a  
18 director’s or officer’s liability insurance contract or financial  
19 institution bond under other applicable law.

20 “(C) CONSENT REQUIREMENT.—

21 “(i) IN GENERAL.—Except as otherwise provided by  
22 this section, no person may exercise any right or power to  
23 terminate, accelerate, or declare a default under any  
24 contract to which the covered financial company is a party,  
25 or to obtain possession of or exercise control over any  
26 property of the covered financial company or affect any  
27 contractual rights of the covered financial company,  
28 without the consent of the conservator or receiver, as  
29 appropriate, of the covered financial company during the  
30 45-day period beginning on the date of the appointment of  
31 the conservator, or during the 90-day period beginning on  
32 the date of the appointment of the receiver, as applicable.

33 “(ii) CERTAIN EXCEPTIONS.—No provision of this  
34 subparagraph shall apply to a director or officer liability  
35 insurance contract or a financial institution bond, to the  
36 rights of parties to certain qualified financial contracts  
37 pursuant to paragraph (8), or to the rights of parties to  
38 netting contracts pursuant to subtitle A of title IV of the  
39 Federal Deposit Insurance Corporation Improvement Act of  
40 1991 (12 U.S.C. 4401 et seq.), or shall be construed as

1                                   permitting the conservator or receiver to fail to comply  
2                                   with otherwise enforceable provisions of such contract.

3                   “(14) EXCEPTION FOR FEDERAL RESERVE BANKS, THE  
4                   SECRETARY, AND THE CORPORATION SECURITY INTEREST.—  
5                   No provision of this subsection shall apply with respect to—

6                                   “(A) any extension of credit from any Federal Reserve bank, the  
7                                   Secretary, or the Corporation to any covered financial company; or,

8                                   “(B) any security interest in the assets of the covered financial  
9                                   company securing any such extension of credit; or

10                   “(15) SAVINGS CLAUSE.--The meanings of terms used in this  
11                   subsection are applicable for purposes of this subsection only, and shall  
12                   not be construed or applied so as to challenge or affect the characterization,  
13                   definition, or treatment of any similar terms under any other statute,  
14                   regulation, or rule, including, but not limited, to the Gramm-Leach-Bliley  
15                   Act, the Legal Certainty for Bank Products Act of 2000, the securities  
16                   laws (as that term is defined in section 3(a)(47) of the Securities Exchange  
17                   Act of 1934), and the Commodity Exchange Act.

18                   “(k) VALUATION OF CLAIMS IN DEFAULT.—

19                                   “(1) IN GENERAL.—Notwithstanding any other provision of Federal  
20                                   law or the law of any State, and regardless of the method which the  
21                                   Corporation determines to utilize with respect to a covered financial  
22                                   company, including transactions authorized under subsection (o), this  
23                                   subsection shall govern the rights of the creditors of such covered  
24                                   financial company.

25                                   “(2) MAXIMUM LIABILITY.—The maximum liability of the  
26                                   Corporation, acting as receiver or in any other capacity, to any person  
27                                   having a claim against the receiver or the covered financial company for  
28                                   which such receiver is appointed shall equal the amount such claimant  
29                                   would have received if—

30                                   “(A) a determination had not been made under subsection (b)(2)  
31                                   of this section with respect to the covered financial company; and

32                                   “(B) the covered financial company had been liquidated under  
33                                   Title 11, United States Code, or any case related to Title 11, United  
34                                   States Code (including but not limited to a case initiated by SIPC  
35                                   with respect to a financial company subject to the Securities  
36                                   Investor Protection Act of 1970), or any State insolvency law.

37                   “(3) ADDITIONAL PAYMENTS AUTHORIZED.—

1                   “(A) IN GENERAL.—The Corporation may, as receiver and  
2                   with the approval of the Secretary of the Treasury, make additional  
3                   payments or credit additional amounts to or with respect to or for  
4                   the account of any claimant or category of claimants of a covered  
5                   financial company if the Corporation determines that such  
6                   payments or credits are necessary or appropriate to—

7                               “(i) minimize losses to the receiver from the resolution  
8                               of the covered financial company under this section; or

9                               “(ii) prevent or mitigate serious adverse effects to  
10                              financial stability or the U.S. economy.

11                   “(B) MANNER OF PAYMENT.—The Corporation may make  
12                   payments or credit amounts under subparagraph (A) directly to the  
13                   claimants or may make such payments or credit such amounts to a  
14                   company other than a covered financial company or a bridge  
15                   financial company established with respect thereto in order to  
16                   induce such other company to accept liability for such claims.

17                   “(l) LIMITATION ON COURT ACTION.—Except as provided in this  
18                   section or at the request of the conservator or receiver appointed for a covered  
19                   financial company under this section, no court may take any action to restrain or  
20                   affect the exercise of powers or functions of the conservator or receiver hereunder.

21                   “(m) LIABILITY OF DIRECTORS AND OFFICERS.—

22                               “(1) IN GENERAL.--A director or officer of a covered financial company  
23                               may be held personally liable for monetary damages in any civil action  
24                               described in paragraph (2) by, on behalf of, or at the request or direction of  
25                               the Corporation, which action is prosecuted wholly or partially for the  
26                               benefit of the Corporation—

27                               “(A) acting as conservator or receiver of such covered financial  
28                               company;

29                               “(B) acting based upon a suit, claim, or cause of action  
30                               purchased from, assigned by, or otherwise conveyed by such  
31                               receiver or conservator; or

32                               “(C) acting based upon a suit, claim, or cause of action  
33                               purchased from, assigned by, or otherwise conveyed in whole or in  
34                               part by a covered financial company or its affiliate in connection  
35                               with assistance provided under subsection (c).

36                   “(2) ACTIONS COVERED.—Paragraph (1) shall apply with respect to  
37                   actions for gross negligence, including any similar conduct or conduct that

1 demonstrates a greater disregard of a duty of care (than gross negligence)  
2 including intentional tortious conduct, as such terms are defined and  
3 determined under applicable State law.

4 “(3) SAVINGS CLAUSE.--Nothing in this paragraph shall impair or  
5 affect any right of the Corporation under other applicable law.

6 “(n) DAMAGES.—In any proceeding related to any claim against a covered  
7 financial company’s director, officer, employee, agent, attorney, accountant,  
8 appraiser, or any other party employed by or providing services to a covered  
9 financial company, recoverable damages determined to result from the  
10 improvident or otherwise improper use or investment of any covered financial  
11 company’s assets shall include principal losses and appropriate interest.

12 “(o) BRIDGE FINANCIAL COMPANIES.—

13 “(1) ORGANIZATION.—

14 “(A) PURPOSE.—The Corporation, as receiver of one or more  
15 covered financial companies or in anticipation of being appointed  
16 receiver of one or more financial companies, may organize one or  
17 more bridge financial companies in accordance with this  
18 subsection.

19 “(B) AUTHORITIES.—Upon the creation of a bridge financial  
20 company under subparagraph (A) with respect to a covered  
21 financial company, such bridge financial company may—

22 “(i) assume such liabilities (including liabilities  
23 associated with any trust or custody business) of such  
24 covered financial company as the Corporation may, in its  
25 discretion, determine to be appropriate;

26 “(ii) purchase such assets (including assets associated  
27 with any trust or custody business) of such covered  
28 financial company as the Corporation may, in its discretion,  
29 determine to be appropriate; and

30 “(iii) perform any other temporary function which the  
31 Corporation may, in its discretion, prescribe in accordance  
32 with this section.

33 “(2) CHARTER AND ESTABLISHMENT.—

34 “(A) CHARTER.—If the Corporation is or expects to be  
35 appointed as receiver for a financial company, the Corporation  
36 may grant a Federal charter under this subsection to one or more

1 bridge financial company or companies with respect to such  
2 financial company which shall, by operation of law and  
3 immediately upon issuance of its charter, be established and  
4 operate in accordance with, and subject to, such charter and this  
5 section.

6 “(B) MANAGEMENT.—Upon its establishment, a bridge  
7 financial company shall be under the management of a board of  
8 directors appointed by the Corporation.

9 “(C) ARTICLES OF ASSOCIATION.—The articles of  
10 association and organization certificate of a bridge financial  
11 company shall have such terms as the Corporation may provide,  
12 shall be approved by the Corporation, and shall be executed by  
13 such representatives as the Corporation may designate.

14 “(D) TERMS OF CHARTER; RIGHTS AND PRIVILEGES.—  
15 Subject to and in accordance with the provisions of this subsection,  
16 the Corporation shall—

17 “(i) establish the terms of the charter of a bridge financial  
18 company and the rights, powers, authorities and privileges  
19 of a bridge financial company granted by the charter or as  
20 an incident thereto; and

21 “(ii) provide for, and establish the terms and conditions  
22 governing, the management (including, but not limited to,  
23 the bylaws and the number of directors of the board of  
24 directors) and operations of the bridge financial company.

25 “(E) TRANSFER OF RIGHTS AND PRIVILEGES OF  
26 COVERED FINANCIAL COMPANY.—

27 “(i) IN GENERAL.—Notwithstanding any other  
28 provision of Federal law or the law of any State, the  
29 Corporation may provide for a bridge financial company to  
30 succeed to and assume any rights, powers, authorities or  
31 privileges of the covered financial entity with respect to  
32 which the bridge financial company was established and,  
33 upon such determination by the Corporation, the bridge  
34 financial company shall immediately and by operation of  
35 law succeed to and assume such rights, powers, authorities  
36 and privileges.

37 “(ii) EFFECTIVE WITHOUT APPROVAL.—Any  
38 succession to or assumption by a bridge financial company  
39 of rights, powers, authorities or privileges of a covered

1 financial company under clause (i) or otherwise shall be  
2 effective without any further approval under Federal or  
3 State law, assignment, or consent with respect thereto.

4 “(F) CORPORATE GOVERNANCE AND ELECTION AND  
5 DESIGNATION OF BODY OF LAW.—To the extent permitted  
6 by the Corporation and consistent with this section and any rules,  
7 regulations or directives issued by the Corporation under this  
8 section, a bridge financial company may elect to follow the  
9 corporate governance practices and procedures as are applicable to  
10 a corporation incorporated under the general corporation law of the  
11 State of Delaware, or the state of incorporation or organization of  
12 the covered financial company with respect to which the bridge  
13 financial company was established, as such law may be amended  
14 from time to time.

15 “(G) CAPITAL.—

16 “(i) CAPITAL NOT REQUIRED.--Notwithstanding  
17 any other provision of Federal or State law, a bridge  
18 financial company may, if permitted by the Corporation,  
19 operate without any capital or surplus, or with such capital  
20 or surplus as the Corporation may in its discretion  
21 determine to be appropriate.

22 “(ii) NO CONTRIBUTION BY CORPORATION  
23 REQUIRED.—The Corporation is not required to pay  
24 capital into a bridge financial company or to issue any  
25 capital stock on behalf of a bridge financial company  
26 established under this subsection.

27 “(iii) AUTHORITY.—If the Corporation determines that  
28 such action is advisable, the Corporation may cause capital  
29 stock or other securities of a bridge financial company  
30 established with respect to a covered financial company to  
31 be issued and offered for sale in such amounts and on such  
32 terms and conditions as the Corporation may, in its  
33 discretion, determine.

34 “(3) INTERESTS IN AND ASSETS AND OBLIGATIONS OF  
35 COVERED FINANCIAL COMPANY.—Notwithstanding paragraphs (1)  
36 or (2) or any other provision of law—

37 “(A) a bridge financial company shall assume, acquire, or  
38 succeed to the assets or liabilities of a covered financial company  
39 (including the assets or liabilities associated with any trust or  
40 custody business) only to the extent that such assets or liabilities

1 are transferred by the Corporation to the bridge financial company  
2 in accordance with, and subject to the restrictions set forth in,  
3 paragraph (1)(B); and

4 “(B) a bridge financial company shall not assume, acquire, or  
5 succeed to any obligation that a covered financial company for  
6 which a receiver has been appointed may have to any shareholder  
7 of the covered financial company that arises as a result of the status  
8 of that person as a shareholder of the covered financial company.

9 “(4) BRIDGE FINANCIAL COMPANY TREATED AS BEING IN  
10 DEFAULT FOR CERTAIN PURPOSES.—A bridge financial company  
11 shall be treated as a covered financial company in default at such times  
12 and for such purposes as the Corporation may, in its discretion, determine.

13 “(5) TRANSFER OF ASSETS AND LIABILITIES.—

14 “(A) TRANSFER OF ASSETS AND LIABILITIES.—The  
15 Corporation, as receiver, may transfer any assets and liabilities of a  
16 covered financial company (including any assets or liabilities  
17 associated with any trust or custody business) to one or more  
18 bridge financial companies in accordance with and subject to the  
19 restrictions of paragraph (1).

20 “(B) SUBSEQUENT TRANSFERS.—At any time after the  
21 establishment of a bridge financial company with respect to a  
22 covered financial company, the Corporation, as receiver, may  
23 transfer any assets and liabilities of such covered financial  
24 company, as the Corporation may, in its discretion, determine to be  
25 appropriate in accordance with and subject to the restrictions of  
26 paragraph (1).

27 “(C) TREATMENT OF TRUST OR CUSTODY BUSINESS.—  
28 For purposes of this paragraph, the trust or custody business,  
29 including fiduciary appointments, held by any covered financial  
30 company is included among its assets and liabilities.

31 “(D) EFFECTIVE WITHOUT APPROVAL.—The transfer of  
32 any assets or liabilities, including those associated with any trust or  
33 custody business of a covered financial company to a bridge  
34 financial company shall be effective without any further approval  
35 under Federal or State law, assignment, or consent with respect  
36 thereto.

37 “(E) EQUITABLE TREATMENT OF SIMILARLY  
38 SITUATED CREDITORS.—The Corporation shall treat all  
39 creditors of a covered financial company that are similarly situated

1 under subsection (i)(1) in a similar manner in exercising the  
2 authority of the Corporation under this subsection to transfer any  
3 assets or liabilities of the covered financial company to one or  
4 more bridge financial companies established with respect to such  
5 covered financial company, except that the Corporation may take  
6 actions (including making payments) that do not comply with this  
7 subparagraph, if—

8 “(i) The Corporation determines that such actions are  
9 necessary to maximize the value of the assets of the  
10 covered financial company, to maximize the present value  
11 return from the sale or other disposition of the assets of the  
12 covered financial company, to minimize the amount of any  
13 loss realized upon the sale or other disposition of the assets  
14 of the covered financial company, or to contain or address  
15 serious adverse effects to financial stability or the U.S.  
16 economy; and

17 “(ii) all creditors that are similarly situated under  
18 subsection (i)(1) receive not less than the amount provided  
19 in subsection (k)(2).

20 “(F) LIMITATION ON TRANSFER OF LIABILITIES.—  
21 Notwithstanding any other provision of law, the aggregate amount  
22 of liabilities of a covered financial company that are transferred to,  
23 or assumed by, a bridge financial company from a covered  
24 financial company may not exceed the aggregate amount of the  
25 assets of the covered financial company that are transferred to, or  
26 purchased by, the bridge financial company from the covered  
27 financial company.

28 “(6) STAY OF JUDICIAL ACTION.—Any judicial action to which a  
29 bridge financial institution becomes a party by virtue of its acquisition of  
30 any assets or assumption of any liabilities of a covered financial company  
31 shall be stayed from further proceedings for a period of up to 45 days (or  
32 such longer period as may be agreed to upon the consent of all parties) at  
33 the request of the bridge financial company.

34 “(7) AGREEMENTS AGAINST INTEREST OF THE BRIDGE  
35 FINANCIAL COMPANY.—No agreement that tends to diminish or  
36 defeat the interest of the bridge financial company in any asset of a  
37 covered financial company acquired by the bridge financial company shall  
38 be valid against the bridge financial company unless such agreement is in  
39 writing and executed by an authorized officer or representative of the  
40 covered financial company.

41 “(8) NO FEDERAL STATUS.—

1 “(A) AGENCY STATUS.—A bridge financial company is not  
2 an agency, establishment, or instrumentality of the United States.

3 “(B) EMPLOYEE STATUS.—Representatives for purposes of  
4 paragraph (1)(B), directors, officers, employees, or agents of a  
5 bridge financial company are not, solely by virtue of service in any  
6 such capacity, officers or employees of the United States. Any  
7 employee of the Corporation or of any Federal instrumentality who  
8 serves at the request of the Corporation as a representative for  
9 purposes of paragraph (1)(B), director, officer, employee, or agent  
10 of a bridge financial company shall not—

11 “(i) solely by virtue of service in any such capacity lose  
12 any existing status as an officer or employee of the United  
13 States for purposes of title 5, United States Code, or any  
14 other provision of law; or

15 “(ii) receive any salary or benefits for service in any  
16 such capacity with respect to a bridge financial company in  
17 addition to such salary or benefits as are obtained through  
18 employment with the Corporation or such Federal  
19 instrumentality.

20 “(9) EXEMPT TAX STATUS.—Notwithstanding any other provision  
21 of Federal or State law, a bridge financial company, its franchise, property,  
22 and income shall be exempt from all taxation now or hereafter imposed by  
23 the United States, by any territory, dependency, or possession thereof, or  
24 by any State, county, municipality, or local taxing authority.

25 “(10) FEDERAL AGENCY APPROVAL; ANTITRUST REVIEW.—

26 (A) IN GENERAL.—If a transaction involving the merger or  
27 sale of a bridge financial company requires approval by a Federal  
28 agency, the transaction may not be consummated before the 5th  
29 calendar day after the date of approval by the Federal agency  
30 responsible for such approval with respect thereto. If, in  
31 connection with any such approval a report on competitive factors  
32 from the Attorney General is required, the Federal agency  
33 responsible for such approval shall promptly notify the Attorney  
34 General of the proposed transaction and the Attorney General shall  
35 provide the required report within 10 days of the request. If a filing  
36 is required under the Hart-Scott-Rodino Antitrust Improvements  
37 Act of 1976 with the Department of Justice or the Federal Trade  
38 Commission, the waiting period shall expire not later than the 30<sup>th</sup>  
39 day following such filing notwithstanding any other provision of  
40 Federal law or any attempt by any Federal agency to extend such

1 waiting period, and no further request for information by any  
2 Federal agency shall be permitted.

3 “(B) EMERGENCY.—If the Secretary in consultation with the  
4 Chairman of the Federal Reserve Board has found that the  
5 Corporation must act immediately to prevent the probable failure  
6 of 1 or more of the covered financial companies involved, the  
7 approvals and filings referred to in subparagraph (A) shall not be  
8 required and the transaction may be consummated immediately by  
9 the Corporation.

10 “(11) DURATION OF BRIDGE FINANCIAL COMPANY.—Subject to  
11 paragraphs (13) and (14), the status of a bridge financial company as such  
12 shall terminate at the end of the 2-year period following the date it was  
13 granted a charter. The Corporation may, in its discretion, extend the status  
14 of the bridge financial company as such for 3 additional 1-year periods.

15 “(12) TERMINATION OF BRIDGE FINANCIAL COMPANY  
16 STATUS.—The status of any bridge financial company as such shall  
17 terminate upon the earliest of—

18 “(A) the merger or consolidation of the bridge financial  
19 company with a company that is not a bridge financial company;

20 “(B) at the election of the Corporation, the sale of a majority of  
21 the capital stock of the bridge financial company to a company  
22 other than the Corporation and other than another bridge financial  
23 company;

24 “(C) the sale of 80 percent, or more, of the capital stock of the  
25 bridge financial company to a person other than the Corporation  
26 and other than another bridge financial company;

27 “(D) at the election of the Corporation, either the assumption of  
28 all or substantially all of the liabilities of the bridge financial  
29 company by a company that is not a bridge financial company, or  
30 the acquisition of all or substantially all of the assets of the bridge  
31 financial company by a company that is not a bridge financial  
32 company, or other entity as permitted under applicable law; and

33 “(E) the expiration of the period provided in paragraph (11), or  
34 the earlier dissolution of the bridge financial company as provided  
35 in paragraph (14).

36 “(13) EFFECT OF TERMINATION EVENTS.—

1 “(A) MERGER OR CONSOLIDATION.—A merger or  
2 consolidation as provided in paragraph (12)(A) shall be conducted  
3 in accordance with, and shall have the effect provided in, the  
4 provisions of applicable law. For the purpose of effecting such a  
5 merger or consolidation, the bridge financial company shall be  
6 treated as a corporation organized under the laws of the State of  
7 Delaware (unless the law of another State has been selected by the  
8 bridge financial company in accordance with paragraph (2)(F)),  
9 and the Corporation shall be treated as the sole shareholder thereof,  
10 notwithstanding any other provision of State or Federal law.

11 “(B) CHARTER CONVERSION.—Following the sale of a  
12 majority of the capital stock of the bridge financial company as  
13 provided in paragraph (12)(B), the Corporation may amend the  
14 charter of the bridge financial company to reflect the termination  
15 of the status of the bridge financial company as such, whereupon  
16 the company shall have all of the rights, powers, and privileges  
17 under its constituent documents and applicable State or Federal  
18 law. In connection therewith, the Corporation may take such steps  
19 as may be necessary or convenient to reincorporate the bridge  
20 financial company under the laws of a State and, notwithstanding  
21 any provisions of State or Federal law, such state-chartered  
22 corporation shall be deemed to succeed by operation of law to such  
23 rights, titles, powers and interests of the bridge financial company  
24 as the Corporation may provide, with the same effect as if the  
25 bridge financial company had merged with the State-chartered  
26 corporation under provisions of the corporate laws of such State.

27 “(C) SALE OF STOCK.—Following the sale of 80 percent or  
28 more of the capital stock of a bridge financial company as  
29 provided in paragraph (12)(C), the company shall have all of the  
30 rights, powers, and privileges under its constituent documents and  
31 applicable State or Federal law. In connection therewith, the  
32 Corporation may take such steps as may be necessary or  
33 convenient to reincorporate the bridge financial company under the  
34 laws of a State and, notwithstanding any provisions of State or  
35 Federal law, the state-chartered corporation shall be deemed to  
36 succeed by operation of law to such rights, titles, powers and  
37 interests of the bridge financial company as the Corporation may  
38 provide, with the same effect as if the bridge financial company  
39 had merged with the State-chartered corporation under provisions  
40 of the corporate laws of such State.

41 “(D) ASSUMPTION OF LIABILITIES AND SALE OF  
42 ASSETS.—Following the assumption of all or substantially all of  
43 the liabilities of the bridge financial company, or the sale of all or

1 substantially all of the assets of the bridge financial company, as  
2 provided in paragraph (12)(D), at the election of the Corporation  
3 the bridge financial company may retain its status as such for the  
4 period provided in paragraph (11) or may be dissolved at the  
5 election of the Corporation.

6 “(E) AMENDMENTS TO CHARTER.—Following the  
7 consummation of a transaction described in subparagraph (A), (B),  
8 (C), or (D) of paragraph (12), the charter of the resulting company  
9 shall be amended to reflect the termination of bridge financial  
10 company status, if appropriate.

11 “(14) DISSOLUTION OF BRIDGE FINANCIAL COMPANY.—

12 “(A) IN GENERAL.—Notwithstanding any other provision of  
13 State or Federal law, if a bridge financial company’s status as such  
14 has not previously been terminated by the occurrence of an event  
15 specified in subparagraph (A), (B), (C), or (D) of paragraph (12)—

16 “(i) the Corporation may, in its discretion, dissolve the  
17 bridge financial company in accordance with this paragraph  
18 at any time; and

19 “(ii) the Corporation shall promptly commence  
20 dissolution proceedings in accordance with this paragraph  
21 upon the expiration of the 2-year period following the date  
22 the bridge financial company was chartered, or any  
23 extension thereof, as provided in paragraph (11).

24 “(B) PROCEDURES.—The Corporation shall remain the  
25 receiver of a bridge financial company for the purpose of  
26 dissolving the bridge financial company. The Corporation as such  
27 receiver shall wind up the affairs of the bridge financial company  
28 in conformity with the provisions of law relating to the liquidation  
29 of covered financial companies. With respect to any such bridge  
30 financial company, the Corporation as receiver shall have all the  
31 rights, powers, and privileges and shall perform the duties related  
32 to the exercise of such rights, powers, or privileges granted by law  
33 to a receiver of a covered financial company and, notwithstanding  
34 any other provision of law, in the exercise of such rights, powers,  
35 and privileges the Corporation shall not be subject to the direction  
36 or supervision of any State agency or other Federal agency.

37 “(15) AUTHORITY TO OBTAIN CREDIT.—

38 “(A) IN GENERAL.—A bridge financial company may obtain  
39 unsecured credit and issue unsecured debt.

1                   “(B) INABILITY TO OBTAIN CREDIT.—If a bridge financial  
2                   company is unable to obtain unsecured credit or issue unsecured  
3                   debt, the Corporation may authorize the obtaining of credit or the  
4                   issuance of debt by the bridge financial company—

5                               “(i) with priority over any or all of the obligations of the  
6                               bridge financial company;

7                               “(ii) secured by a lien on property of the bridge financial  
8                               company that is not otherwise subject to a lien; or

9                               “(iii) secured by a junior lien on property of the bridge  
10                              financial company that is subject to a lien.

11                   “(C) LIMITATIONS.—

12                              “(i) IN GENERAL.—The Corporation, after notice and  
13                              a hearing, may authorize the obtaining of credit or the  
14                              issuance of debt by a bridge financial company that is  
15                              secured by a senior or equal lien on property of the bridge  
16                              financial company that is subject to a lien only if—

17                                      “(I) the bridge financial company is unable to  
18                                      otherwise obtain such credit or issue such debt; and

19                                      “(II) there is adequate protection of the interest of  
20                                      the holder of the lien on the property with respect to  
21                                      which such senior or equal lien is proposed to be  
22                                      granted.

23                   “(D) BURDEN OF PROOF.—In any hearing under this  
24                   subsection, the Corporation has the burden of proof on the issue of  
25                   adequate protection.

26                   “(16) EFFECT ON DEBTS AND LIENS.—The reversal or modification  
27                   on appeal of an authorization under this subsection to obtain credit or issue  
28                   debt, or of a grant under this section of a priority or a lien, does not affect  
29                   the validity of any debt so issued, or any priority or lien so granted, to an  
30                   entity that extended such credit in good faith, whether or not such entity  
31                   knew of the pendency of the appeal, unless such authorization and the  
32                   issuance of such debt, or the granting of such priority or lien, were stayed  
33                   pending appeal.

34                   “(p) SUPERVISORY RECORDS.—Whenever the Corporation has been  
35                   appointed as receiver for a covered financial company, the Appropriate Federal  
36                   Regulatory Agency for the company (if any) shall make available all supervisory

1 records to the receiver which may be used by the receiver in any manner the  
2 receiver determines to be appropriate.

3 “(q) EXPEDITED PROCEDURES FOR CERTAIN CLAIMS.—

4 “(1) TIME FOR FILING NOTICE OF APPEAL.—The notice of  
5 appeal of any order, whether interlocutory or final, entered in any case  
6 brought by the Corporation against a covered financial company’s director,  
7 officer, employee, agent, attorney, accountant, or appraiser or any other  
8 person employed by or providing services to a covered financial company  
9 shall be filed not later than 30 days after the date of entry of the order.  
10 The hearing of the appeal shall be held not later than 120 days after the  
11 date of the notice of appeal. The appeal shall be decided not later than 180  
12 days after the date of the notice of appeal.

13 “(2) SCHEDULING.—A court of the United States shall expedite the  
14 consideration of any case brought by the Corporation against a covered  
15 financial company’s director, officer, employee, agent, attorney,  
16 accountant, or appraiser or any other person employed by or providing  
17 services to a covered financial company. As far as practicable, the court  
18 shall give such case priority on its docket.

19 “(3) JUDICIAL DISCRETION.—The court may modify the schedule  
20 and limitations stated in paragraphs (1) and (2) in a particular case, based  
21 on a specific finding that the ends of justice that would be served by  
22 making such a modification would outweigh the best interest of the public  
23 in having the case resolved expeditiously.

24 “(r) FOREIGN INVESTIGATIONS.—The Corporation, as conservator or  
25 receiver of any covered financial company and for purposes of carrying out any  
26 power, authority, or duty with respect to a covered financial company—

27 “(1) may request the assistance of any foreign financial authority and  
28 provide assistance to any foreign financial authority in accordance with  
29 section 8(v) of the Federal Deposit Insurance Act as if the covered  
30 financial company were an insured depository institution, the Corporation  
31 were the appropriate Federal banking agency for the company and any  
32 foreign financial authority were the foreign banking authority; and

33 “(2) may maintain an office to coordinate foreign investigations or  
34 investigations on behalf of foreign financial authorities.

35 “(s) PROHIBITION ON ENTERING SECRECY AGREEMENTS AND  
36 PROTECTIVE ORDERS.—The Corporation may not enter into any agreement or  
37 approve any protective order which prohibits the Corporation from disclosing the  
38 terms of any settlement of an administrative or other action for damages or

1 restitution brought by the Corporation in its capacity as conservator or receiver for  
2 a covered financial company.

3 “(t) LIQUIDATION OF CERTAIN COVERED FINANCIAL COMPANIES  
4 OR BRIDGE FINANCIAL COMPANIES.—Notwithstanding any other provision  
5 of law (other than a conflicting provision of this section ), the Corporation, in  
6 connection with the liquidation of any covered financial company or bridge  
7 financial company with respect to which the Corporation has been appointed as  
8 receiver, shall—

9 “(1)in the case of any covered financial company or bridge financial  
10 company that is a stockbroker (as that term is defined in section 101 of  
11 title 11 of the United States Code) but is not a member of the Securities  
12 Investor Protection Agency, apply the provisions of subchapter III of  
13 chapter 7 of title 11 of the United States Code in respect of the distribution  
14 to any ‘customer’ of all ‘customer name securities’ and ‘customer  
15 property’ (as such terms are defined in section 741 of such title 11) as if  
16 such covered financial company or bridge financial company were a  
17 debtor for purposes of such subchapter; or

18 “(2) in the case of any covered financial company or bridge financial  
19 company that is a commodity broker (as that term is defined in section 101  
20 of title 11 of the United States Code), apply the provisions of subchapter  
21 IV of chapter 7 of title 11 of the United States Code in respect of the  
22 distribution to any ‘customer’ of all ‘customer property’ (as such terms are  
23 defined in section 761 of such title 11) as if such covered financial  
24 company or bridge financial company were a debtor for purposes of such  
25 subchapter.

26 “(u) FUNDING.—

27 “(1) APPROPRIATION AND APPORTIONMENT.— For the purposes  
28 of carrying out the authorities granted in this section, there are hereby  
29 appropriated to the Corporation, subject to subsection (c), such sums as  
30 are necessary, without fiscal year limitation. Notwithstanding any other  
31 provision of law, including section 7(d) of the Federal Deposit Insurance  
32 Act, such amounts shall be subject to apportionment under section 1517 of  
33 title 31, United States Code, and restrictions that generally apply to the use  
34 of appropriated funds in title 31, United States Code, and other laws.

35 “(2) PROCEEDS TREATED AS MISCELLANEOUS RECEIPTS.—  
36 Amounts received by the Corporation in carrying out this section  
37 (including proceeds from payments of principal and interest from loans  
38 made pursuant to subsection (c) and special assessments received under  
39 subsection (v), but excluding amounts received by any covered financial  
40 company when the Corporation is acting in its capacity as conservator or

1 receiver for such company) shall be deposited into the Treasury as  
2 miscellaneous receipts.

3 “(v) RECOVERY OF EXPENDED FUNDS; SPECIAL ASSESSMENTS ON  
4 FINANCIAL COMPANIES. —

5  
6 “(1) Recovery of expended funds.--The Corporation shall take  
7 steps to recover the amount of funds expended by the Corporation under  
8 this section that the Corporation has not otherwise recouped. Such steps  
9 shall include 1 or more emergency special assessments on financial  
10 companies taking into consideration the following—

11  
12 “(A) The net present value of the appropriated funds expended;

13  
14 “(B) The amount and frequency of assessments to recover the full  
15 amount of appropriated funds expended within 60 months from the  
16 date of the determination in subsection (b); and

17  
18 “(C) Such other considerations that the Corporation and the  
19 Secretary deem appropriate.

20  
21 “(2) Rulemaking.—The Corporation and the Secretary shall issue joint  
22 regulations to carry out this subsection.

23  
24 “(w) NO FEDERAL STATUS.—

25 “(1) Agency Status.—A covered financial company (or any subsidiary  
26 thereof) that receives assistance, is placed into conservatorship or  
27 receivership, or both, under subsection (c) is not a department, agency, or  
28 instrumentality of the United States for purposes of statutes that confer  
29 powers on or impose obligations on government entities.

30  
31 “(2) Employee status.—Interim directors, directors, officers, employees,  
32 or agents of a covered financial company that is placed into  
33 conservatorship or receivership are not, solely by virtue of service in any  
34 such capacity, officers or employees of the United States. Any employee  
35 of the Corporation or of any Federal agency who serves at the request of  
36 the Corporation as an interim director, director, officer, employee, or agent  
37 of a covered financial company that is placed into conservatorship or  
38 receivership shall not—

39  
40 “(A) solely by virtue of service in any such capacity lose any  
41 existing status as an officer or employee of the United States for  
42 purposes of Title 5, United States Code, or any other provision of  
43 law, or;

44

1                   “(B) receive any salary or benefits for service in any such capacity  
2                   with respect to a covered financial company that is placed into  
3                   conservatorship or receivership in addition to such salary or  
4                   benefits as are obtained through employment with the Corporation  
5                   or other Federal agency.  
6

7   **SEC. 3. CLARIFICATION OF PROHIBITION REGARDING**  
8   **CONCEALMENT OF ASSETS FROM CONSERVATOR, RECEIVER, OR**  
9   **LIQUIDATING AGENT.**

10   (a) **IN GENERAL.**— Section 1032 of title 18, United States Code, is amended in  
11   paragraph (1) by deleting “or” before “the National Credit Union Administration  
12   Board,” and by inserting immediately thereafter “or the Appropriate Federal  
13   Regulatory Agency, as defined in section 2 of the Resolution Authority for  
14   Systematically Significant Financial Institution Holding Companies Act of 2009  
15   (\_\_ U.S.C. § \_\_ (a)(2)(A)),”.

16   (b) **CONFORMING CHANGE.**—The title of section 1032 of title 18, United  
17   States Code, is amended by deleting “of financial institution”.

18   **SEC.4. MISCELLANEOUS PROVISIONS**

19   (a) **BANKRUPTCY CODE AMENDMENTS.**—Section 109(b)(2) of title 11 of  
20   the United States Code is amended by adding “covered financial company as that  
21   term is defined in section 2 of the Resolution Authority for Systemically  
22   Significant Financial Companies Act of 2009,” after a “domestic insurance  
23   company”.

24   (b) **FEDERAL DEPOSIT INSURANCE CORPORATION IMPROVEMENT**  
25   **ACT.**—Section 403(a) of the Federal Deposit Insurance Corporation  
26   Improvement Act of 1991 (12 U.S.C. 4403(a)) is amended by inserting “section  
27   2(j) of the Resolution Authority for Systemically Significant Financial Companies  
28   Act of 2009 , section 1367 of the Federal Housing Enterprises Financial Safety  
29   and Soundness Act of 1992 (12 U.S.C. 4617(d)), “after “section 1821(e) of this  
30   title”.